

IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 108

APRIL TERM, A.D. 2026

October 1, 2026

MATTHEW MALCOM; JEFF THOMAS;
JIM ROOKS; JOSHUA MALCOM;
CHRISTINA KITCHEN; and JIM
ROSCOE,

Appellants
(Plaintiffs),

v.

CHUCK GRAY, in his capacity as
Wyoming Secretary of State,

Appellee
(Defendant).

S-26-0029

*Appeal from the District Court of Laramie County
The Honorable Nathaniel S. Hibben, Judge*

Representing Appellants:

William P. Schwartz and Leah C. Schwartz, Parsons Behle & Latimer, Jackson, Wyoming; Benjamin J. Rowland, Davis & Cannon, LLP, Cheyenne, Wyoming. Argument by Mr. Schwartz.

Representing Appellee:

Keith G. Kautz, Wyoming Attorney General; Mackenzie Williams, Deputy Attorney General; Dami Metzler, Senior Assistant Attorney General. Argument by Mr. Williams.

Representing Amicus Curiae the Equality State Policy Center and the League of Women Voters of Wyoming:

Amanda K. Achord and Haultain E. Corbett, Lonabaugh and Riggs, LLP, Sheridan, Wyoming.

Before BOOMGAARDEN, C.J., and GRAY, FENN, and JAROSH, JJ., and EAMES, D.J.

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GRAY, Justice.

[¶1] Appellants challenged Wyoming’s “sore loser,” closed primary, and party affiliation deadline statutes. The district court held the statutes were a valid exercise of legislative authority. Appellants appeal only the district court’s ruling concerning the party affiliation statutes. Those statutes establish a 96-day party affiliation deadline before the primary election (the “96-day Freeze Period” or the “party affiliation deadline”), Wyo. Stat. Ann. §§ 22-3-115, 22-5-212, and 22-5-214. Appellants contend the 96-day Freeze Period violates their rights under the Wyoming Constitution to “open, free and equal” elections, to the “untrammelled exercise of the right of suffrage,” Wyo. Const. art. 1, § 27, and to equal political rights. Wyo. Const. art. 1, § 3. After balancing the right to vote against the legislature’s duty to “secure the purity of elections” and to “guard against abuses of the elective franchise,” Wyo. Const. art. 6, § 13, we conclude the party affiliation deadline is not an unconstitutionally onerous burden on Appellants’ right to vote and does not violate equal protection guarantees. We affirm.

ISSUES

[¶2] The Appellants raise two issues, which we rephrase:

1. Does the 96-day Freeze Period unconstitutionally burden qualified Wyoming electors’ rights to “open, free and equal” elections and to the “untrammelled exercise of the right of suffrage” under Wyo. Const. art. 1, § 27?
2. Does the 96-day Freeze Period violate the guarantee of equal political rights to vote under Wyo. Const. art. 1, § 3, by imposing an extra-constitutional condition on voting in a primary election?

FACTS

[¶3] The facts are not in dispute. The legislature amended Wyo. Stat. Ann. §§ 22-3-115(a)(vi), 22-5-212, and 22-5-214 to require electors wishing to change their party affiliation to do so 96 days prior to the primary election. Wyo. Stat. Ann. § 22-3-115(a)(vi) allows an elector to cancel their registration “at any time except for the period for which party changes are prohibited as specified in W.S. 22-5-214.” Wyo. Stat. Ann. § 22-5-212 makes primary ballots available to electors who “declare or change party affiliation in accordance with W.S. 22-5-214.” Wyo. Stat. Ann. § 22-5-214(a) states that for “a primary election, an elector may declare or change party affiliation . . . before the first day on which an application for [party] nomination [for office] may be filed under W.S. 22-5-209.” Wyo. Stat. Ann. § 22-5-209 provides that an application for party nomination must be filed “not

more than ninety-six (96) days and not later than eighty-one (81) days next preceding the primary election.”¹

[¶4] After the Freeze Period statutes took effect, Chuck Gray, the Wyoming Secretary of State (the Secretary), issued Directive No. 2023-01 to Wyoming’s County Clerks (Directive). The Directive recognizes that *registered* voters may not declare or change party affiliation during the Freeze Period. It instructs County Clerks to “permit an *unregistered* elector who otherwise meets the qualifications to register to vote, to declare an affiliation with a major political party upon registration, during [the Freeze Period].” (Emphasis added.)

[¶5] The Appellants were impacted in different ways by the challenged amendments. Appellants Matthew Malcom, Jeff Thomas, and Jim Rooks were qualified electors who ran for party nominations in the primary election held on August 20, 2024. Matthew Malcom sought the Republican nomination for House District 61. Jeff Thomas sought the Republican nomination for House District 4. Jim Rooks ran in the Democratic primary for Teton County Commission. None succeeded in their primaries, and they abandoned their efforts to appear on the ballot.

[¶6] Appellants Joshua Malcom, Christina Kitchen, and Jim Roscoe were qualified electors who were unable to vote for candidates of their choice in the 2024 primary election. Joshua Malcom was not affiliated with a political party, and because he was not registered as a Republican, he was unable to vote for his brother, Matthew Malcom, in the Republican primary. Christina Kitchen was a registered Republican and was unable to vote for her brother-in-law, Jim Rooks, in the Democratic primary. Both Joshua Malcom and Christina Kitchen voted for their preferred candidates in the general election by casting write-in votes. Jim Roscoe is a registered Republican but wants to vote for candidates in primary elections regardless of his party affiliation.

[¶7] Appellants sued the Secretary in his official capacity as the chief election officer for the State of Wyoming. In the district court, the Appellants challenged various sections of the election code, including those described above. On cross-motions for summary judgment, the district court held the statutes were a valid exercise of the legislature’s authority to structure elections and did not abridge citizens’ core rights to vote for candidates of their choice or to seek and hold public offices. Appellants appeal the district court’s ruling on the 96-day Freeze Period for party registration.

¹ Before enactment of 2023 Wyo. Sess. Laws ch. 151 (HB 103), an elector could change party affiliation by filing with the county clerk or at the polls on election day. *See* Wyo. Stat. Ann. §§ 22-5-212, 22-5-214 (2021); *see also id.* § 22-3-115(a)(vi) (LexisNexis 2021).

STANDARD OF REVIEW

[¶8] This Court reviews “a district court’s rulings on summary judgment and the constitutionality of statutes de novo.” *State v. Johnson*, 2026 WY 1, ¶ 12, 582 P.3d 380, 389–90 (Wyo. 2026) (citation omitted). “We accord no deference to the district court . . . and may affirm the summary judgment on any legal grounds appearing in the record.” *Schroth, Tr. of Robert E. & Linda M. Schroth Revocable Living Tr. dated 8/20/2004 v. Kirk*, 2025 WY 24, ¶ 24, 564 P.3d 570, 579 (Wyo. 2025) (citations omitted). Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” W.R.C.P. 56(a). The parties have stipulated to the material facts, and therefore, there are no factual issues precluding summary judgment. The issues before the Court present only questions of law.

[¶9] When we interpret the constitution, “[w]e are guided primarily by the intent of the drafters.” *Johnson*, ¶ 15, 582 P.3d at 390 (quoting *Gordon v. State by & through Capitol Bldg. Rehab.*, 2018 WY 32, ¶ 30, 413 P.3d 1093, 1103 (Wyo. 2018), *overruled by Johnson*, ¶ 30, 582 P.3d at 395); *see also Rasmussen v. Baker*, 7 Wyo. 117, 50 P. 819, 822 (1897) (“The constitution derives its force from the people who adopted it, and it is the intention of the people which is to be sought for.” (citation omitted)).

In determining that intent, we look first to the plain and unambiguous language used in the text[.] If the language is plain and unambiguous, there is no room left for construction. It must be presumed that in [the] case of a constitution the people have intended whatever has been plainly expressed. Courts are not at liberty to depart from that meaning which is plainly declared.

Johnson, ¶ 15, 582 P.3d at 390–91 (quoting *Gordon*, ¶ 30, 413 P.3d at 1103).

[W]e follow harmonizing rules when interpreting the constitution and statutes. . . .

Our cases explain that every statement in the constitution must be interpreted in light of the entire document, rather than as a series of sequestered pronouncements, and that the constitution should not be interpreted to render any portion of it meaningless, with all portions of it read *in pari materia* and every word, clause and sentence considered so that no part will be inoperative or superfluous.

Saunders [v. *Hornecker*], 2015 WY 34, ¶ 19, 344 P.3d [771, 777 (Wyo. 2015)] (citations omitted); *see also Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 162 (Wyo. 2005) (discussing the same rules in the context of statutory interpretation).

Johnson, ¶ 16, 582 P.3d at 391.

This Court generally uses the following standard when reviewing the constitutionality of a Wyoming law: “Statutes are presumed to be constitutional, and we will resolve any doubt in favor of constitutionality.” *Vaughn v. State*, 2017 WY 29, ¶ 7, 391 P.3d 1086, 1091 (Wyo. 2017) (citing *Kammerer v. State*, 2014 WY 50, ¶ 5, 322 P.3d 827, 830 (Wyo. 2014)). In most cases, the [party challenging constitutionality of a statute] bears the burden of proving the statute is unconstitutional. Normally, this burden is heavy in that appellant must clearly and exactly show the unconstitutionality beyond any reasonable doubt. *Michael v. Hertzler*, 900 P.2d 1144, 1146 (Wyo. 1995) (quoting *Miller v. City of Laramie*, 880 P.2d 594, 597 (Wyo. 1994)).

Hicks v. State, 2025 WY 113, ¶ 83, 578 P.3d 366, 389 (Wyo. 2025).

DISCUSSION

I. Does the 96-day Freeze Period unconstitutionally burden qualified Wyoming electors’ rights to “open, free and equal” elections and to the “untrammelled exercise of the right of suffrage” under Wyo. Const. art. 1, § 27?

[¶10] Appellants first contend the 96-day Freeze Period violates their fundamental right to vote guaranteed by article 1, section 27 of the Wyoming Constitution. The Secretary responds that voting in a primary election is not a fundamental right because primaries are not constitutionally protected elections, and even if they were, the Freeze Period is a valid exercise of legislative authority. We first confirm that the right to vote is fundamental. We next decide the Secretary’s threshold argument that a primary is not a constitutionally protected election. We then discuss the analytical framework and level of scrutiny we apply to the constitutional provisions at issue.

A. The Right to Vote Is Fundamental

[¶11] The right to vote in Wyoming elections is a fundamental political right under the Wyoming Constitution. *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (“The right

to vote is a fundamental right[.]”). Article 1, section 27 guarantees “open, free and equal” elections and the “untrammelled exercise of the right of suffrage.” Article 1, section 3 protects equal political rights and prohibits laws affecting those rights based on any circumstance or condition other than individual competency or unworthiness determined by a court. Wyoming courts have long recognized the fundamental nature of the right to vote and consistently apply “strict protection” of those rights through liberal construction of voting rights in favor of the voters. *Brimmer*, 521 P.2d at 578 (“The right to vote is . . . entitled to the strict protection of the courts.”).

B. Primary Elections Are Constitutional Elections

[¶12] The Secretary contends primary elections are not elections in the constitutional sense because primaries were not used to select candidates at the time the Wyoming Constitution was adopted. From that premise, he argues the right to vote protected by article 1, sections 3 and 27 does not extend to voting in primaries. We disagree.

[¶13] The Secretary relies on decisions from other states construing their own constitutions.² Those cases do not shed light on the meaning of the Wyoming Constitution.

[¶14] Sister-state authority may inform the inquiry when the constitutional text and structure are similar. It cannot supply a limitation our constitution does not contain. Wyoming’s starting point remains the text as the people adopted it. *Rasmussen*, 50 P. at 822. “Decisions from other states’ courts may provide some guidance in the interpretation of constitutional provisions,” but “each case is controlled by the specific wording of the constitutional provision” at issue. *Cathcart v. Meyer*, 2004 WY 49, ¶ 51, 88 P.3d 1050, 1069 (Wyo. 2004) (citation omitted). The wording of constitutions varies from state to state and limits how far out-of-state cases can take us. *Id.* ¶¶ 51–55, 88 P.3d at 1069–70 (illustrating “the difficulty in finding guidance in out-of-state cases”). The cases cited by the Secretary exemplify the problem. Several of them construed constitutions that granted the right to vote only for specified officers, not in “any election.” See Wyo. Const. art. 6, § 2. Others involved party-run primaries that the State did not conduct. Wyoming’s text is broader, and Wyoming primaries are conducted under the state election code. The out-

² See, e.g., *Seaman v. Baughman*, 47 N.W. 1091, 1092 (Iowa 1891) (“‘election,’ in its broadest sense, signifies a choice . . . but in the sense in which it is used in the constitution it means a choice of persons for public offices . . .” (citations omitted)); *Woodruff v. State*, 52 A. 294, 296 (N.J. Sup. Ct. 1902) (penal statutes at issue made a distinction between primary and general elections); *Ledgerwood v. Pitts*, 125 S.W. 1036, 1039 (Tenn. 1910) (“the limitations and safeguards of the Constitution apply exclusively to the final election when the officer is chosen in the mode required by the Constitution”); *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 958 (Mo. 1914) (“the word ‘elections’ as used [in the state constitution] has reference to ‘choosing a person or persons for office by vote, and nowhere in the sense of nominating a candidate for an office by a political party’” (citations omitted)); *In re Jamestown Caucus L.*, 112 A. 900, 901 (R.I. 1921); *McLain v. Fish*, 251 S.W. 686, 689–90 (Ark. 1923) (“Constitutional provisions with respect to elections do not apply to party primaries.” (citation omitted)).

of-state decisions therefore do not answer whether a Wyoming primary is an “election” under article 1, sections 3 and 27.³

[¶15] It is true that when the Wyoming Constitution was adopted in 1889, primary elections did not exist.⁴ The Century Dictionary, which both parties cite for usage contemporaneous with the Wyoming Constitution’s adoption, defined “election” as:

1. A deliberate act of choice; particularly, a choice of means for accomplishing a given end. . . .
2. The choice of a person or persons for office of any kind by the voting of a body of qualified or authorized electors. . . .
3. The act or process of choosing a person or persons for office by vote; a polling for office; also, the occasion or set time and provision for making such choice: as, a general or a special *election*
4. By extension, a public vote upon a proposition submitted; a poll for the decision by vote of any public matter or question

Election, The Century Dictionary, (1895)
<https://archive.org/details/cu31924091890602/page/1866/mode/1up> (last visited Sept. 23, 2026).

[¶16] The Secretary isolates the second of several listed meanings—“choice of a person or persons **for office**”—and argues primary elections do not result in that choice and therefore could not be included in the voting rights clauses of the Wyoming Constitution. The Appellants focus on the first definition provided by the dictionary and argue primary

³ See *Ledgerwood*, 125 S.W. at 1039 (right to “vote for members of the General Assembly and civil officers”); *In re Jamestown Caucus L.*, 112 A. at 901 (right to vote “in the election of all civil officers”); cf. Wyo. Const. art. 6, § 2. See also *McLain*, 251 S.W. at 689–90 (parties “had a right to prescribe the tests for the voters at the primary elections”); *Robinson v. Holman*, 26 S.W.2d 66, 68 (Ark. 1930) (the State “ha[d] nothing to do with the holding of primary elections”).

⁴ The Wyoming Constitution was adopted in 1889. Wyo. Const. preamble. Even prior to that, voting rights had been established by the Wyoming Territory. *Slaymaker v. Phillips*, 5 Wyo. 453, 40 P. 971, 972 (1895). The legislature enacted statutes establishing the first primary elections in 1911. 1911 Wyo. Sess. Laws ch. 23, § 1. At that time, the law required primaries to “be conducted as required for general elections under the general election laws of the State of Wyoming.” 1911 Wyo. Sess. Laws ch. 23, § 17. Since then, primary elections have been treated as elections, in every sense of the word. The current Election Code defines “[e]lection” as “all elections participated in by the voters of a city, town, county, district or the state,” Wyo. Stat. Ann. § 22-1-102(a)(xiii), and specifies its provisions apply to “[g]eneral” and “[p]rimary” elections. Wyo. Stat. Ann. § 22-2-101(a)(i-ii).

elections are “[a] deliberate act of choice” and therefore must be included in the voting rights clauses. Both readings are too narrow. Definitions two, three, and four all describe voting—choosing persons for office, or a public vote on a public question. A primary election is the first step in “[t]he act or process of choosing a person . . . for office by vote.” Certainly, choosing a candidate through the primary process is a public matter or question. Accepting the same contemporaneous source both parties cite, a primary is properly treated as an “election” within the voting-rights provisions of the Wyoming Constitution.

[¶17] When a state makes the primary part of the process of election choice, federal cases have resolved the question consistently with this view. In *United States v. Classic*, 313 U.S. 299, 318, 61 S.Ct. 1031, 1039, 85 L.Ed. 1368 (1941), the United States Supreme Court held Louisiana’s primary was an “integral part of the election machinery” subject to the federal constitution’s elections clause:

Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by [United States Constitution,] Article I, § 2. And this right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative.

Id. at 318–19, 61 S.Ct. at 1039. In *Smith v. Allwright*, the United States Supreme Court recognized *Classic* “erased” any “doubt as to whether or not [Federal] primaries were a part of ‘elections’ subject to Federal” constitutional guarantees. *Smith v. Allwright*, 321 U.S. 649, 660, 64 S.Ct. 757, 763, 88 L.Ed. 987 (1944). The Court held, “It may now be taken as a postulate that the right to vote in . . . a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution.” *Id.* at 661–62, 64 S.Ct. at 764 (declaring unconstitutional the Texas Democratic party’s exclusion of black voters from its primaries).

[¶18] In Wyoming, a statutory process determines elections of state and federal offices and that process includes the primary. See Wyo. Stat. Ann. §§ 22-1-101 through -102 (Wyoming Election Code) and Wyo. Stat. Ann. §§ 22-6-117, -119 (primary elections). Primaries are therefore “elections” within the voting-rights provisions of the Wyoming Constitution, and the right to vote in them is a fundamental right.

[¶19] This conclusion does not decide the claim or, by itself, fix the applicable constitutional test. Before turning to the Freeze Period, we discuss how this Court reviews a challenge to an election statute under article 1, section 27.

C. Analytical Framework

[¶20] Having concluded that a primary is an “election” under the Wyoming Constitution, we turn to the constitutional test or level of scrutiny that governs a claim that a statute violates a constitutional right. We have explained that “[i]f the right implicated is an ordinary rather than a fundamental right, we apply a rational basis test” to determine whether a challenged statute is constitutional. *Johnson*, ¶ 13, 582 P.3d at 390 (citation omitted). “Under the rational basis test, we determine whether the statute[] [is] reasonably related to a legitimate government interest.” *Sheesley v. State*, 2019 WY 32, ¶ 12, 437 P.3d 830, 836 (Wyo. 2019) (citation omitted). However, if the law affects a citizen’s fundamental right, “we carefully assess the nature of the right considering the express constitutional language from which it is derived to determine whether strict scrutiny or some other test for constitutionality should apply.” *Johnson*, ¶ 14, 582 P.3d at 390.

[¶21] The Appellants assert that because the right to vote in a primary election is a fundamental right, it necessarily invokes a strict scrutiny analysis. The Secretary, on the other hand, contends the right to vote in a primary election is not the same as the right to vote in a general election and that rational basis review applies. As explained above, because our voting-rights precedent treats the franchise as fundamental while our Constitution separately charges the legislature with securing the purity of elections, strict scrutiny does not automatically apply. We must therefore determine the appropriate constitutional test when a plaintiff claims an election law unduly burdens the right to vote.

1. Our Election Cases

[¶22] This Court has taken a textual approach to evaluating election law claims under the Wyoming Constitution. In doing so, we have never applied strict scrutiny. In *Brimmer v. Thomson*, we described the right to vote as fundamental and entitled to “the strict protection of the courts,” and we construed the statute in favor of those seeking to take part in the election. *Brimmer*, 521 P.2d at 578. *Brimmer*’s holding was a construction of the law in favor of the voter. It was not an application of strict scrutiny. *Id.* In *Shumway v. Worthey*, we considered whether the Wyoming Election Code prescribed an unconstitutional method of deciding the outcome of a ballot proposition election. There, the appellants contended strict scrutiny applied because the fundamental right to vote was at stake. *Shumway v. Worthey*, 2001 WY 130, ¶ 9, 37 P.3d 361, 366 (Wyo. 2001). We “decline[d] to accept [that request] as a part of our review standard” *Id.* In *Shumway* citing *Murphy v. State Canvassing Bd.*, we explained, “[Q]uite the opposite is true. . . . [A]nd we construe statutes that confer or extend the elective franchise liberally (as opposed to those limiting the right to vote in some way, which then invokes strict scrutiny).” *Id.* (citing *Murphy v. State*

Canvassing Bd., 12 P.3d 677, 680 (Wyo. 2000)). The parenthetical does not decide which test is appropriate here. Its remark that some restrictions “invoke[] strict scrutiny” was dictum, and the Court there construed the statute to protect the franchise rather than to strike it down. *Murphy* did not adopt a test for constitutional challenges to election statutes. It answered certified questions about whether a candidate defeated in one party’s primary, but nominated by write-in in the other, could appear on the general election ballot. *Murphy*, 12 P.3d at 678. The Court applied the *Brimmer* “strict protection of the courts” rule—and did not “interpret the election laws so as to disenfranchise the electors who chose to exercise their votes for Murphy.” *Id.* at 682.

[¶23] As noted above, this Court has never applied strict scrutiny as the ground of decision on voting rights. *Brimmer* recognized voting rights were entitled to “the strict protection of the courts.” *Shumway* did not apply strict scrutiny. *Murphy* did not adopt a test for constitutional challenges to election statutes. We will not read our precedent to require strict scrutiny of a uniform deadline that does not shut qualified electors out or refuse to count ballots already cast. The Freeze Period does neither. This reading fits *Brimmer*’s “strict protection” and gives effect to both article 1, section 27 and article 6, section 13.

2. The Constitutional Text

[¶24] Two decisions after *Murphy* and *Shumway* support our reading of those cases. Neither applied strict scrutiny. *Cathcart*, ¶¶ 47, 50, 88 P.3d at 1068 (holding law placing term limits on state legislators violated Wyo. Const. art. 1, § 3, art. 3, §§ 2 and 52(g)) and *Maxfield v. State*, 2013 WY 14, 294 P.3d 895 (Wyo. 2013) (holding law placing term limits on state officers violated Wyo. Const. art. 1, § 3). In *Cathcart* and *Maxfield*, we emphasized the plain language of the constitution, *Cathcart*, ¶ 48, 88 P.3d at 1068; *Maxfield*, ¶ 34, 294 P.3d at 903, and asked whether the challenged term limit statute fell within the framers’ intent. *Cathcart*, ¶ 49, 88 P.3d at 1068 (“The question is simply whether it was the framers’ intent to allow the legislature to add qualifications to those established in the constitution.”); *Maxfield*, ¶ 34, 294 P.3d at 903 (“The broad language used by the framers does not support [appellants’] reading [of the constitution].”).

[¶25] The claims at issue here depend on the language of the voting-rights provisions of the Wyoming Constitution, and we begin with those provisions. Wyo. Const. art. 1, § 27 provides that “[e]lections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammelled exercise of the right of suffrage.” This provision protects voters’ interests, as explained above. *Supra* ¶¶ 10–11. Wyo. Const. art. 6, § 13 requires the legislature to “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” We measure the 96-day Freeze Period against these provisions. Not every restriction on voting is constitutionally forbidden. Article 1, section 27 protects the franchise. Article 6, section 13 directs the legislature to regulate elections to keep them pure. We give effect to both. Election laws will necessarily impose some burden upon voters. As the United States Supreme Court has said,

“[A]s 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.” *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 1279, 39 L.Ed.2d 714 (1974). To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends. Nevertheless, the state’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

Anderson v. Celebrezze, 460 U.S. 780, 788, 103 S.Ct. 1564, 1569–70, 75 L.Ed.2d 547 (1983); see also *Conrad v. Uinta Cnty. Republican Party*, 2023 WY 46, ¶ 26, 529 P.3d 482, 493 (Wyo. 2023) (“[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder.” (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 1369, 137 L.Ed.2d 589 (1997))).

[¶26] The district court recognized, as do we, that the application of strict scrutiny to every election law would “paralyze the Legislature’s ability to perform its separate constitutional duty to administer elections.” It explained, “Under the Wyoming [C]onstitution, it is difficult, if not impossible to square [Appellants’] claim of strict scrutiny with the constitutional requirement that ‘[t]he legislature shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.’” (quoting Wyo. Const. art. 6, § 12). Additionally, “Article 1, § 27 requires that elections be ‘open, free and equal,’ which suggests the State has an interest in ensuring elections are uniform, comprehensible, and orderly. Strict scrutiny for every election regulation would render [this] provision[] a nullity, or close to it.” We therefore do not apply strict scrutiny to every law that touches the fundamental right to vote. We continue to recognize that the franchise is entitled to the strict protection of the courts.

3. Weighing the Interests

[¶27] In *Conrad*, ¶ 24, 529 P.3d at 492, we recognized that election law challenges based on the federal constitution are governed by Tenth Circuit precedent applying the *Anderson-Burdick* test.

Under that test,

a court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the [political party] seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the [political party's] rights.

[*Utah Republican Party v.]Cox*, 892 F.3d [1066,] 1077 [(10th Cir. 2018)] (quoting *Burdick v. Takushi*, 504 U.S. [428,] 434, 112 S.Ct. [2059,] 2063, [119 L.Ed.2d 245 (1992),] and *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983)) (some quotation marks omitted). If a regulation is found to impose “severe burdens” on a political party’s associational rights, it must be “narrowly tailored to serve a compelling state interest.” *Clingman v. Beaver*, 544 U.S. 581, 586, 125 S.Ct. 2029, 2035, 161 L.Ed.2d 920 (2005) (citing *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364). “However, when regulations impose lesser burdens, ‘a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.’” *Clingman*, 544 U.S. at 586–87, 125 S.Ct. at 2035 (quoting *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364).

Conrad, ¶ 27, 529 P.3d at 493 (declining to apply the *Anderson-Burdick* test because the issue of whether the election code violated the Republican Party’s federal constitutional right to freedom of association was not properly before the Court). As we have said, our cases require “strict protection” of the right to vote, *Brimmer*, 521 P.2d at 578, and they recognize the State’s authority to regulate elections. *Conrad*, ¶ 26, 529 P.3d at 493. We find that article 1, section 27’s guarantee of “open, free and equal” elections and article 6, section 13’s command that the legislature safeguard election purity require a unified constitutional balancing approach. In conducting that analysis, we use the *Anderson-Burdick* sliding scale as a tool to inform our assessment; we do not adopt it as controlling doctrine.

[¶28] Under *Anderson-Burdick*, scrutiny varies with the burden the statute places on the rights secured by the constitution—the “character and magnitude of the asserted” injury. See *Anderson*, 460 U.S. at 789, 103 S.Ct. at 1570; *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245 (1992). At one end, regulations that impose severe burdens on voting rights must be narrowly tailored to advance a compelling state interest. At the other end, reasonable and nondiscriminatory restrictions are upheld if supported by

the state’s important regulatory interests. *See Burdick*, 504 U.S. at 434–35, 112 S.Ct. at 2063–64. Courts applying the test must weigh all relevant factors, including the nature of the burden, the legitimacy and strength of the state’s interests, and whether the burden is necessary to serve those interests. *See Burdick*, 504 U.S. at 434–35, 112 S.Ct. at 2063–64; *Anderson*, 460 U.S. at 788–89, 103 S.Ct. at 1569–70.

[¶29] The Wyoming constitutional provisions at issue require this Court to examine and weigh dual constitutional commands, rights, and interests—the fundamental right to vote in primary elections, and the constitutional directive that the Legislature “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” We first consider the magnitude of the asserted injury to the rights protected by the Wyoming Constitution that the Appellants seek to vindicate. We then evaluate the precise interests the State offers to justify the burden and then examine the legitimacy and strength of those interests and the extent to which they make the burden necessary. The heavier the burden on the constitutional right, the more tailored the statute must be.

D. Application to the 96-Day Freeze Period

[¶30] Appellants argue the Freeze Period violates the guarantees of “open, free and equal” elections and of “untrammelled exercise of the right of suffrage.” Wyo. Const. art. 1, § 27. Appellants contend the 96-day Freeze Period infringes upon electors’ right to vote because it limits their ability to freely change political parties without restriction.

[¶31] The burden the 96-day Freeze Period places on the right to vote in a primary election is slight. Every elector can declare or change party affiliation and vote in primary elections. The freeze does not lock voters into a party. It sets a deadline—affiliation must be declared or changed 96 days before the primary. Electors have fair notice of that deadline, and the statutes provide clear rules for enforcement. *Compare Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973) (New York requirement that voters enroll in a party at least 30 days prior to the preceding general election in order to vote in the subsequent primary was reasonable and not an absolute bar to changing party affiliation) *with Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973) (striking down Illinois rule prohibiting a person from voting in a primary if they had voted in another party’s primary within the preceding 23 calendar months because the rule locked voters into a preexisting party affiliation from one primary to the next, with the only escape being to forego voting in any primary for nearly two years). The Freeze Period is a deadline with notice, not a lock on party affiliation.

[¶32] The State’s justification for the 96-day Freeze Period is to secure “the purity of elections, and guard against abuses of the elective franchise,” as the constitution requires, by preventing party raiding. Party raiding occurs when voters of one party list themselves as members of another party to influence or decide the results of that party’s primary. *See Rosario*, 410 U.S. 752, 93 S.Ct. 1245; *Kusper*, 414 U.S. 51, 94 S.Ct. 303. By requiring

party registration before candidates file, the 96-day Freeze Period limits last-minute switching for the purpose of manipulating a party's nominating process once the field of candidates is known. The legislature tied the deadline to the first day candidates may file because that is when voters first know the field. Wyo. Stat. Ann. § 22-5-209 sets that day 96 days before the primary. Once the candidates' names are public, the incentive to switch parties to influence someone else's primary is at its highest. Requiring affiliation before that date cuts off that last-minute switch. Until then, an elector may declare or change party affiliation freely. Appellants do not show that the constitution required a shorter cutoff or some other means of deterring raiding. The risk the legislature addressed is affiliation after candidates are known. The line it drew—the first day of candidate filing under § 22-5-209—is tied to that risk. A uniform deadline also serves article 1, section 27. It applies the same rule to every elector on the same calendar. Where the burden is slight and the rule is uniform, article 6, section 13 leaves that line drawing to the legislature. The Freeze Period deters affiliation changes that are not motivated by genuine attachment to the party and the state's interest in doing so is legitimate and reasonable. *See, e.g., Moody v. N.Y. State Bd. of Elections*, 86 N.Y.S.3d 25 (App. Div. 2018) (holding state's 25-day primary enrollment deadline “is rationally related to the legitimate state interests in protecting the viability of the political party system by ‘inhibit[ing] party raiding’” (citations omitted)); *Richardson v. State Bd. of Elections, Com. of Ky.*, 697 F. Supp. 295, 298 (W.D. Ky. 1988) (30-day party registration deadline was rationally related to state's legitimate interest in preventing party raiding); *Friedland v. State*, 374 A.2d 60, 64 (N.J. Super. Ct. App. Div. 1977) (upholding New Jersey party registration cutoff of 50 days prior to the primary).

[¶33] Balancing the slight burden the 96-day Freeze Period places on electors against the State's valid interest in preventing party raiding, we conclude the Freeze Period is constitutional and does not violate article 1, section 27. Electors remain free to affiliate and to vote a party ballot. The statute requires that choice before the filing deadline. Article 1, section 27's guarantee of “open, free and equal” elections and the “untrammelled exercise of the right of suffrage” is not violated.

II. Does the 96-day Freeze Period violate the guarantee of equal political rights to vote under Wyo. Const. art. 1, § 3, by imposing an extra-constitutional condition on voting in a primary election?

[¶34] The United States Constitution provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Equal protection “is essentially a direction that all persons similarly situated should be treated alike.” *Hageman v. Goshen Cnty. Sch. Dist. No. 1*, 2011 WY 91, ¶ 53, 256 P.3d 487, 503 (Wyo. 2011) (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985)). “The Wyoming Constitution does not contain such an express ‘equal protection’ clause; rather, it contains a variety of

equality provisions, viz., Article 1, §§ 2, 3, and 34; and Article 3, § 27.” *Id.* (quoting *Greenwalt v. Ram Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 39, 71 P.3d 717, 730 (Wyo. 2003)).

[¶35] Article 1, section 3 of the Wyoming Constitution, one of those equality provisions, states:

Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

[¶36] Appellants contend the Freeze Period statutes violate article 1, section 3 in two respects. First, the Freeze Period establishes a condition other than “incompetency, or unworthiness duly ascertained by a court of competent jurisdiction” on the right to vote. Second, the Freeze Period treats different classifications of voters disparately. We address both arguments.

A. The 96-Day Freeze Period Does Not Place an Extra-Constitutional Condition on the Right to Vote

[¶37] The Appellants rely on *Cathcart* and *Maxfield* to support their argument that the 96-day Freeze Period creates a constitutionally impermissible restriction on the exercise of their voting rights. We disagree.

[¶38] In *Cathcart* and *Maxfield*, we held term limit laws violated article 1, section 3 because the term limit statutes conditioned the political right to hold office upon the “circumstance or condition” of incumbency. *Cathcart*, ¶ 47, 88 P.3d at 1068; *Maxfield*, ¶ 35, 294 P.3d at 903. In those cases, we examined the Wyoming Constitution as a whole and looked to all provisions impacting the right to hold office, reading them *in pari materia*. *Cathcart*, ¶ 44, 88 P.3d at 1067. We recognized the Wyoming Constitution provided qualifications for holding office and concluded those qualifications were meant to be exclusive. *Cathcart*, ¶ 58, 88 P.3d at 1072; *Maxfield*, ¶ 36, 294 P.3d at 903–04.

[¶39] As we did in *Cathcart* and *Maxfield*, we examine provisions of the Wyoming Constitution *in pari materia*—article 1, section 3 does not stand alone. It must be read together with article 6, section 13, which requires the legislature to “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” Unlike the term limit statutes at issue in *Cathcart* and *Maxfield*, the 96-day Freeze Period does not add a “circumstance or condition” to the constitutional qualifications for holding office or for voting. It does not prevent electors from exercising their political rights (in this case, their

right to vote in a primary election)—it sets a deadline for declaring or changing party affiliation. That deadline is a slight burden on the right to vote. It does not run afoul of article 1, section 3.

B. Equal Protection

[¶40] We next turn to Appellants’ argument that the 96-day Freeze Period violates equal protection. Appellants contend the Freeze Period causes disparate treatment in two ways. First, they contend it treats party-affiliated electors differently from electors who are unaffiliated or who have not chosen a party affiliation before the deadline. Second, they argue the Secretary’s Directive impermissibly grants the right to freely declare party affiliation during the Freeze Period to “unregistered” voters or “new registrants,” a right the Freeze Period statutes deny to already registered voters.

[¶41] “[T]his Court uses the conventional federal equal protection analysis in the interpretation of the equality provisions of the Wyoming Constitution.” *Hageman*, ¶ 53, 256 P.3d at 503 (quoting *Newport Int’l Univ., Inc. v. State Dep’t of Educ.*, 2008 WY 72, ¶ 15, 186 P.3d at 387).

In determining whether there is a violation of equal protection doctrine,

we require the party claiming such violation to first demonstrate that the classification at issue “treats similarly situated persons unequally.” *Matter of ALJ*, 836 P.2d 307, 313 (Wyo. 1992). If we determine that the classification does “treat similarly situated persons unequally,” we apply two different levels of scrutiny depending upon the nature of the classification to determine whether equal protection is violated.

That is, where a statute . . . affects a fundamental interest or creates an inherently suspect classification, the court must strictly scrutinize that statute . . . to determine if it is necessary to achieve a compelling state interest. However, if the statute . . . only affects ordinary interests in the economic and social welfare area, the court need only determine that it is rationally related to a legitimate state objective.

Ellett v. State, 883 P.2d 940, 944 (Wyo. 1994), quoting *White v. State*, 784 P.2d 1313, 1315 (Wyo. 1989).

Hageman, ¶ 54, 256 P.3d at 503.

[¶42] The 96-day Freeze Period statutes treat party-affiliated electors differently from registered electors who are unaffiliated or who have not chosen a party affiliation before the deadline. The classification does not treat similarly situated people differently—both groups have the opportunity to choose to affiliate with a political party. The fact that one group declines that opportunity does not create a separate class. There is no equal protection violation.

[¶43] The Appellants also argue the Secretary’s Directive violates article 1, section 3 of the Wyoming Constitution because it impermissibly grants the right to freely declare party affiliation during the Freeze Period to “unregistered” voters or “new registrants,” a right the Freeze Period statutes deny to already registered voters. The Directive states:

I hereby direct and instruct each of you to prohibit a registered elector that is affiliated with a major political party, affiliated with a minor political party, or unaffiliated, from changing or declaring their party affiliation to a major political party during the period for which party changes are prohibited as specified in W.S. 22-5-214.

As written, the Act does not prevent an unregistered voter, or new registrant who otherwise meets the qualifications to register to vote, from registering and declaring an affiliation with a political party within the time period that party changes are otherwise prohibited as specified in W.S. 22-5-214. **Therefore, I hereby direct and instruct each of you to permit an unregistered elector who otherwise meets the qualifications to register to vote, to declare an affiliation with a major political party upon registration, during the period for which party changes are otherwise prohibited as specified in W.S. 22-5-214.**

[¶44] Because the parties did not challenge the Directive’s validity,⁵ we do not determine its legal effect, but assume without deciding, for purposes of our equal-protection analysis, that county clerks will follow the Directive.

⁵ The Secretary’s authority to issue the directive and its validity were not raised by the parties, and we do not decide this question *sua sponte*. *Cross v. Albright*, 2026 WY 75, ¶ 11, 592 P.3d 1092, 1098 (Wyo. 2026) (“[D]ue process concerns arise when a court, *sua sponte*, decides a matter on an issue outside those

[¶45] The classes identified by the Appellants—voters who failed to designate their party before the Freeze Period and those who are newly registered and may designate a party during the Freeze Period—are not similarly situated.

[¶46] The relevant comparison is the elector’s registration status when the Freeze Period begins. A registered voter had a chance to declare or change party before candidates filed. A person who is unregistered has no party affiliation to change and is making that choice for the first time at registration. Those groups are not similarly situated.

[¶47] “Persons are ‘similarly situated’ if they are subject to the same circumstances and same conditions.” *Hicks*, ¶ 142, 578 P.3d at 401 (citations omitted). “It is only in rare situations that members of two classes will be similarly situated with respect to the purposes of all governmental actions. [W]e endeavor to determine the purpose of the governmental action in this case before embarking on a similarly-situated analysis.” *Bird v. Wyo. Bd. of Parole*, 2016 WY 100, ¶ 9, 382 P.3d 56, 62 (Wyo. 2016) (citations omitted). “If the classes [identified] are not similarly situated, there can be no equal protection violation.” *Martin v. Bd. of Cnty. Comm’rs of Laramie Cnty.*, 2022 WY 21, ¶ 12, 503 P.3d 68, 73 (Wyo. 2022) (citation omitted).

[¶48] Here, to prevent party raiding, the Freeze Period statutes provide that only those electors who declare or change their party affiliation before the Freeze Period can receive ballots. The Directive draws a distinction between those voters who had the option to make such a declaration before the Freeze Period and those who register to vote during the Freeze Period. Unregistered voters are exempted from the Freeze Period deadline. Those voters have no existing affiliation to change. *See, e.g., Hicks*, ¶ 143, 578 P.3d at 401 (“Juveniles and adult offenders are not similarly situated in the equal protection context.”); *City of Laramie v. Univ. of Wyo.*, 2024 WY 13, ¶¶ 33–34, 542 P.3d 607, 619 (Wyo. 2024) (The University of Wyoming is unlike “other proprietors of golf courses and athletic fields” and the city’s equal protection argument that it was treated differently because the statute exempted it from water ordinance “failed to identify a classification through which similarly situated persons or entities [were] treated unequally, and no further equal

pleaded or raised by the parties without notice and opportunity to be heard.”); *Peterson v. Meritain Health, Inc.*, 2022 WY 54, ¶ 20, 508 P.3d 696, 705 (Wyo. 2022) (“[W]e adhere to [o]ur general rule . . . that we will not consider issues not raised in the court below.” (citations on quotation marks omitted)). *See also* Wyo. Const. art. 4, § 12 (“The powers and duties of the secretary of state . . . shall be as prescribed by law.”); Wyo. Stat. Ann. § 22-2-103 (“The secretary of state is the chief election officer for the state and shall maintain uniformity in the applications and operations of the election laws of Wyoming.”); *Matter of Bessemer Mt.*, 856 P.2d 450, 453 (Wyo. 1993) (“[R]ulemaking in accordance with the Wyoming Administrative Procedure Act is necessary when a proposed action of an agency is substantive or legislative, as opposed to interpretive.”); *Solvay Chemicals, Inc. v. Dep’t of Revenue*, 2018 WY 124, ¶ 13, 430 P.3d 295, 299 (Wyo. 2018) (“Any action taken by an agency without authority is ultra vires and void.” (citation omitted)).

protection analysis” was warranted.). The two groups are not similarly situated, and there is no equal protection violation.

CONCLUSION

[¶49] The 96-day Freeze Period does not unconstitutionally burden qualified Wyoming electors’ rights to “open, free and equal” elections and to the “untrammelled exercise of the right of suffrage” under article 1, section 27 of the Wyoming Constitution. The Freeze Period does not violate the guarantee of equal political rights under article 1, section 3 of the Wyoming Constitution. We affirm.