

January 2012

## Wyoming Election Law: Proposals for Reform

Khale Lenhart

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlr>

---

### Recommended Citation

Lenhart, Khale (2012) "Wyoming Election Law: Proposals for Reform," *Wyoming Law Review*. Vol. 12: No. 1, Article 3.

Available at: <https://scholarship.law.uwyo.edu/wlr/vol12/iss1/3>

This Article is brought to you for free and open access by the UW College of Law Reviews at Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

---

# WYOMING LAW REVIEW

VOLUME 12

2012

NUMBER 1

---

## WYOMING ELECTION LAW: PROPOSALS FOR REFORM

*Khale Lenhart\**

I. INTRODUCTION .....	29
A. <i>Purposes of Election Law</i> .....	30
B. <i>Overview of Wyoming Law</i> .....	30
II. ELECTION ADMINISTRATION .....	32
A. <i>Voter Registration</i> .....	32
B. <i>Voter Purges</i> .....	35
C. <i>Independent Ballot Actions</i> .....	40
1. <i>Ballot Access for Recognized Political Party Candidates</i> .....	40
2. <i>Ballot Access for Independent or Unrecognized Party Candidates</i> .....	41
III. CAMPAIGN FINANCE .....	43
IV. CONCLUSION .....	48

### I. INTRODUCTION

Elections are the way that we as a society have chosen to express the public sentiment and to make choices about which individuals will be responsible for making the decisions that affect the populace as a whole. Because elections serve such an important function, governments pass laws to protect the integrity of elections and ensure that they are as close to actual expressions of the “public will” as possible. This article looks at the Wyoming state election laws and suggests revisions to enhance the fairness and representative nature of Wyoming elections. Specifically, Wyoming can improve its election laws by: (1) implementing voter registration statutes to allow third-party voter drives and easier mail-in registration; (2) providing broader access to the major party Presidential nomination process by lengthening the time before voter registration purges; (3) allowing for greater choice by easing the independent candidate ballot access requirements; and

---

\* Khale Lenhart is an associate at Hirst Applegate, LLP. He received a B.A. in Political Science, *summa cum laude*, from Lee University in 2006 and his J.D. from Harvard Law School in 2009.

(4) improving the campaign finance restrictions by closing loopholes and adjusting contribution limits for inflation.

### *A. Purposes of Election Law*

Before a qualitative assessment is made, it is necessary to identify the broad underlying goals of election law. The ideal set of election laws establishes a framework where elections are held fairly and openly, without undue influence, and with a voting population that closely resembles the general population. Most laws attempting to further these goals can be categorized as promoting one of three fundamental values: voter access, vote integrity, and vote finality.<sup>1</sup> Voter access ensures that all eligible citizens are given the opportunity to vote. Legal protection of vote integrity is necessary because fraud, incompetence, and impropriety in the election process reduce the extent to which elections indicate voter preferences. Laws that do not provide for finality in the vote damage citizen confidence in the electoral process, diminishing their perceived legitimacy.<sup>2</sup> This article evaluates Wyoming laws based on the extent to which they further these goals. Wyoming statutes addressing voter registration, voter purges, ballot access, and election finance fail to fully meet these underlying goals of election law and should therefore be revised to better reflect these goals.

### *B. Overview of Wyoming Law*

Before delving into a discussion of the merits of a particular statute or area of law, the unique aspects of Wyoming election law should be addressed. The federal National Voter Registration Act (Act) subjects most states to specific requirements relating to voter registration.<sup>3</sup> For example, the Act requires “Motor Voter” registration, allowing voters to register at all federal, state, or nongovernmental offices that provide public assistance.<sup>4</sup> The Act also prohibits removal of voters for failure to vote until at least two elections have passed.<sup>5</sup> However, the Act allows states to opt out of the Act’s provisions if they meet certain criteria, most notably by allowing for Election Day voter registration.<sup>6</sup> Wyoming is one of seven states that allow Election Day voter registration and is accordingly exempted from the provisions of the Act, including restrictions on voter purges.<sup>7</sup> Instead, Wyoming

---

<sup>1</sup> STEVEN F. HUEFNER, DANIEL P. TOKAJI & EDWARD B. FOLEY, FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES 5–6 (2007).

<sup>2</sup> *Id.*

<sup>3</sup> 42 U.S.C. §§ 1973gg to 1973gg-10 (2006).

<sup>4</sup> *Id.* § 1973gg-3.

<sup>5</sup> *Id.* § 1973gg-6(d)(1)(B)(ii).

<sup>6</sup> *Id.* § 1973gg-2(b)(2).

<sup>7</sup> WYO. STAT. ANN. § 22-3-104 (2011). Other states with Election Day voter registration are Idaho, Iowa, Minnesota, Montana, New Hampshire, and Wisconsin. IDAHO CODE ANN. § 34-408A (2011); IOWA CODE § 48A.7A (2011); MINN. STAT. § 201.061(3) (2011); MONT. CODE ANN. § 13-2-304 (2011); N.H. REV. STAT. ANN. § 654:7-a (2011); WIS. STAT. § 6.55(2) (2011).

purges registered voters after failing to vote in only one general election unless they take affirmative action to prevent their removal from the registration list.<sup>8</sup> Wyoming statutes do not specifically allow early voting, but a separate provision is unnecessary because anyone may obtain an absentee ballot.<sup>9</sup>

To register to vote in Wyoming, a person must be a citizen of the United States<sup>10</sup> and appear in person at the county registration office, at the polls, or register by mail.<sup>11</sup> For all registrations, a citizen must fill out a state-issued form detailing his or her eligibility to vote and provide an acceptable form of identification.<sup>12</sup> Because all registrants are required to appear in person and provide identification, state officials have recognized that voter registration drives are prohibited to the extent that they involve third parties delivering registration materials.<sup>13</sup>

Political party rules govern presidential nomination contests in Wyoming. Wyoming uses a caucus system, under which delegates to national party conventions are chosen at local caucus meetings and at a statewide meeting of local delegates.<sup>14</sup> Because the parties control the delegate selection process, party rules and bylaws also play a role in Wyoming election law.

Wyoming's election finance scheme places some limits on who can give political donations and how much they are allowed to give. Individuals are limited to giving \$1000 per candidate per election.<sup>15</sup> Individuals are also subject to an aggregate limitation of \$25,000 per election cycle.<sup>16</sup> These limits apply only to donations to candidates or political action committees. There are no limits on monetary donations an individual can give to a political party.<sup>17</sup> Political action committees are not regulated in how much they can receive or how much they can contribute. Political parties are similarly not limited in either amounts received or expended under state law, but are statutorily barred from lending support to a

---

<sup>8</sup> WYO. STAT. ANN. § 22-3-116.

<sup>9</sup> *Id.* § 22-9-102.

<sup>10</sup> *Id.* § 22-3-102(a). To be eligible to vote in Wyoming, a person must be a citizen of the United States, at least eighteen years of age, a bona fide resident of Wyoming, and not have been adjudicated mentally incompetent or convicted of a felony without his or her voting rights having been restored. *Id.*

<sup>11</sup> *Id.* § 22-3-104.

<sup>12</sup> *Id.* § 22-3-103.

<sup>13</sup> Tom Morton, *Wyo Bans Voter Registration Groups like ACORN*, CASPER STAR-TRIBUNE (Oct. 23, 2008, 12:00 AM), <http://www.casperstartribune.net/articles/2008/10/23/news/wyoming/b9ea28a16d1986fb872574ec000208a9.txt>.

<sup>14</sup> WYO. STAT. ANN. § 22-4-118(a)(iv).

<sup>15</sup> *Id.* §§ 22-25-102(c)(i), -102(j). Primaries and general elections are considered separate elections for purposes of financial limitations. *Id.*

<sup>16</sup> *Id.* § 22-25-102(c)(ii).

<sup>17</sup> *Id.* § 22-25-102(f).

particular candidate in a party primary and are subject to federal limits.<sup>18</sup> Federal law does apply to political parties, however, and limits donations from individuals to state and local parties to \$10,000 per calendar year.<sup>19</sup>

These unique aspects, while giving Wyoming its own flavor of election law, may also result in circumstances that are not in accordance with the core principles of election law. This article identifies these circumstances and suggests changes that will bring Wyoming closer to ideal election laws.

## II. ELECTION ADMINISTRATION

Election administration laws deal with the structural issues of elections, such as voter registration or polling place requirements. This article proposes three ways the legislature could easily improve election administration in Wyoming: alter voter registration requirements, lengthen the time required before purging voters, and ease ballot access for independent candidates.

### A. Voter Registration

Election Day registration has positive effects on both the number of voters at the polls and the extent to which those voters mirror the general population.<sup>20</sup> Wyoming's voter registration scheme could be improved by altering its election statute to allow more opportunity for third-party voter registration drives and mail-in registration.

Studies show Election Day registration typically increases voter turnout by between three and five percent.<sup>21</sup> This effect was readily apparent when Wyoming instituted Election Day registration.<sup>22</sup> There is an easily discernible pattern in Wyoming turnout figures between Presidential election years and off-year elections.<sup>23</sup> Voter turnout significantly increases during Presidential election years and subsequently decreases in the following off-year elections. The sole exception in recent Wyoming history was in 1994, an off-year election year, during which voter turnout actually increased following the 1992 Presidential election.<sup>24</sup> Not

---

<sup>18</sup> *Id.* § 22-25-104.

<sup>19</sup> 2 U.S.C. § 441a(a)(1)(D) (2006).

<sup>20</sup> Benjamin Highton, *Voter Registration and Turnout in the United States*, 2 PERSPECTIVES ON POLITICS 507, 509 (2004).

<sup>21</sup> *Id.*

<sup>22</sup> The law providing for Election Day registration was passed in the 1993 legislative session and took effect at the 1994 election. 1993 Wyo. Sess. Laws 172 (codified at WYO. STAT. ANN. § 22-3-104(f)(ii)(A)).

<sup>23</sup> See *Wyoming Voter Registration and Turnout Statistics*, WYOMING SECRETARY OF STATE, <http://sos.wy.state.wy.us/Elections/Docs/profile.pdf> (last visited Nov. 17, 2011).

<sup>24</sup> *Id.*

coincidentally, that was the same year that Election Day registration laws took effect in Wyoming.<sup>25</sup>

Studies identifying the classes of persons who tend to benefit from Election Day registration laws reveal that the effect is not proportionate across demographics.<sup>26</sup> Rather, Election Day registration tends to result in greater increases in turnout among young voters and persons who have recently moved to the jurisdiction.<sup>27</sup> As young voters and movers are typically among the least likely to vote,<sup>28</sup> this registration system may be seen, not as disproportionately advantaging young persons or movers, but rather as leveling the playing field by removing obstacles to access to the polls.

A study by Knack and White examined the effects of Election Day registration. The study provides empirical evidence to show that Election Day voter registration has been very successful in increasing the representative qualities of the voting population.<sup>29</sup> During its initial year of Election Day registration, Wyoming went from being the thirty-ninth ranked state in the nation for young voters constituting a representative share of voters to seventh in the nation.<sup>30</sup> Similarly, Wyoming's ranking of turnout of voters who had lived in their jurisdiction under one year improved from forty-second in the nation to sixth.<sup>31</sup> Knack and White concluded that not only does Election Day registration increase the total number of voters, but it also "enhances turnout quality."<sup>32</sup> In fact, representation among low income, less educated, young, and recently moved voters increased in states that adopted Election Day registration relative to states that did not.<sup>33</sup>

Election Day registration has a positive effect on increasing the representative nature of Wyoming's electoral population. Harkening back to the purposes of election law, provisions that result in the voting population more closely mirroring the general population should be supported. Because voter registration

---

<sup>25</sup> 1993 Wyo. Sess. Laws 172 (codified at WYO. STAT. ANN. § 22-3-104(f)(ii)(A)).

<sup>26</sup> FRANCES FOX PIVEN & RICHARD A. CLOWARD, *WHY AMERICANS DON'T VOTE* 178 (1988) (illustrating the impact of income and education on the ability to register); RAYMOND E. WOLFINGER & STEVEN J. ROSENSTONE, *WHO VOTES?* 8 (1980) (addressing the impact of socioeconomic status on the ability to "bear the cost of voting"); Stephen Knack & James White, *Election-Day Registration and Turnout Inequality*, 22 POL. BEHAV. 29, 30 (2000) (discussing other studies which have studied the effects of voter registration deadlines).

<sup>27</sup> Knack & White, *supra* note 26, at 30.

<sup>28</sup> *Id.* at 32.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 34–35.

<sup>31</sup> *Id.* at 35.

<sup>32</sup> *Id.* at 36.

<sup>33</sup> *Id.* at 35–36.

deadlines<sup>34</sup> disproportionately impede certain sectors of the population from casting ballots, they inherently decrease the precision with which the voting population corresponds to the general population.<sup>35</sup> This is especially true when one takes into account the disproportionate effects on young and mobile voters. By decreasing the amount of advance planning and the need to appear in person at a government office beforehand, Election Day registration increases the likelihood that those unaccustomed to the registration procedures or those less likely to have reliable transportation will be able to vote.<sup>36</sup>

Despite the positive effects of Election Day registration, Wyoming's voter registration system is not perfect and minor changes may serve to further remove obstacles to citizen participation in state elections. One such change in the Wyoming voter registration statutes would be an alteration of the identification standards to allow for third-party voter registration and easier mail-in registration. Currently, Wyoming law requires voters to present government-issued identification when registering.<sup>37</sup> This requirement effectively prohibits third-party voter registration drives. Although state officials in charge of administering elections have expressed satisfaction with this result because it reduces the opportunity for voter fraud,<sup>38</sup> minor changes to the law would easily permit third-party registration drives with their associated positive impacts on voter turnout.

Voters registering by mail in Wyoming are required to show acceptable state identification both at the time of registration and before receiving a ballot.<sup>39</sup> Voters registering in person, however, are only required to show identification at the time of registration, and do not need identification to receive a ballot.<sup>40</sup> The requirement that voters registering by mail show acceptable identification twice is redundant. Removal of the requirement that a person provide identification to register by mail would allow for third-party registration drives, while still protecting vote integrity by requiring identification before a ballot is actually cast. Rather than requiring voters who register by mail to show identification twice, a more reasonable provision would require such voters to present either a driver's license number or the last four digits of a social security number, as is

---

<sup>34</sup> Voter registration deadlines are the dates by which citizens must be registered to vote in order to be able to cast a ballot in an election.

<sup>35</sup> This is not to say that voter registration laws should be eliminated. To the contrary, voter registration laws are necessary to protect the integrity of the vote and they are a safeguard against fraud. Voter registration laws should be written in a way that protects the vote integrity while imposing minimal obstacles to eligible voters casting ballots, and should do so in a way that does not disproportionately disadvantage any particular segment of society.

<sup>36</sup> Knack & White, *supra* note 26, at 34–36.

<sup>37</sup> WYO. STAT. ANN. § 22-3-103(a)(v) (2011).

<sup>38</sup> Morton, *supra* note 13.

<sup>39</sup> WYO. STAT. ANN. § 22-3-118.

<sup>40</sup> *Id.*

the case in Colorado,<sup>41</sup> Montana,<sup>42</sup> and South Dakota.<sup>43</sup> By doing so, Wyoming can ensure the registration is for an actual, eligible person without imposing burdens that make it more difficult to register. This minor change would allow interested parties such as campaigns, civic organizations, or interest groups to assist registering members of the public, ultimately improving voter turnout. The fewer administrative hoops that a voter has to jump through at the time of voting, the more likely it is that he or she casts a ballot. As such, removing the double identification requirement for mail-in registration would further the goal of voter access while ensuring vote integrity.

### *B. Voter Purges*

The law that removes voters from voter registration lists after failing to vote in one general election may prevent a significant number of voters from casting ballots.<sup>44</sup> In most cases, such purges are inconsequential, as a voter can register again at the polls and cast his or her ballot. There are some circumstances, however, in which voter purges may result in a voter being unable to participate in the electoral process. The most likely person to be affected by automatic voter purges is the voter who only votes in Presidential elections and seeks to participate in the party nominations process. Over fifty-seven thousand more Wyoming voters cast ballots in the 2004 Presidential general election than the 2002 midterm elections, while the number of voters fell just under fifty thousand voters in the 2006 midterm elections.<sup>45</sup> The fluctuation in voters suggests that somewhere around fifty thousand Wyoming voters must either respond to the state's notice of pending removal to maintain their registration or register again every four years. This may have significant impacts on the delegate selection process for major party Presidential nominations.

The voter purge statutes combined with statutorily-imposed processes by which the parties hold caucuses raise institutional barriers to full participation. Because Wyoming allows same day voter registration and purges voters after failing to vote in only one general election, many Wyoming voters, especially

---

<sup>41</sup> COLO. REV. STAT. § 1-2-501 (2011).

<sup>42</sup> MONT. CODE ANN. § 13-2-110 (2011).

<sup>43</sup> S.D. CODIFIED LAWS § 12-4-5.4 (2011). South Dakota explicitly contemplates third-party voter registration drives and mail-in registration. *Id.* §§ 12-4-3, -5.

<sup>44</sup> WYO. STAT. ANN. § 22-3-115(a)(i).

<sup>45</sup> *Compare Statewide Candidates' Abstract—Official General Election Results*, WYOMING SECRETARY OF STATE (Nov. 5, 2002), [http://soswy.state.wy.us/Elections/Docs/2002/02Results/02General/02\\_General%20Election\\_SW\\_Candidates.pdf](http://soswy.state.wy.us/Elections/Docs/2002/02Results/02General/02_General%20Election_SW_Candidates.pdf), with *Statewide Candidates' Abstract—Official General Election Results*, WYOMING SECRETARY OF STATE (Nov. 2, 2004), [http://soswy.state.wy.us/Elections/Docs/2004/04Results/04General/04\\_General\\_SW\\_Candidates.pdf](http://soswy.state.wy.us/Elections/Docs/2004/04Results/04General/04_General_SW_Candidates.pdf), and *Statewide Total Ballots Cast Official Summary—Wyoming General Election*, WYOMING SECRETARY OF STATE (Nov. 7, 2006), [http://soswy.state.wy.us/Elections/Docs/2006/06Results/06General/SW\\_TB\\_Summary.pdf](http://soswy.state.wy.us/Elections/Docs/2006/06Results/06General/SW_TB_Summary.pdf).



those who take interest in only Presidential elections and do not vote in midterm elections, are unlikely to be registered at the time their respective parties hold their caucuses and are therefore likely to be excluded. Rather than a statewide primary, Wyoming uses a caucus system to allocate delegates for party nominations.<sup>46</sup> Both parties have cut-off dates for registration several weeks in advance of caucuses.<sup>47</sup> Many voters would have been purged from the registration lists after failure to cast a ballot in the midterms and, unless they took the time to seek out the county election office and register in the interim, would be ineligible to participate in party caucuses. As a result, Wyoming voters who are used to showing up at the polls, registering to vote, and casting their ballot for President are unlikely to be able to participate in choosing party nominees.

The Republican Party's delegate selection process contains more barriers to voter participation than that of the Democratic Party. The Republican process features a multi-tiered caucus system, beginning with precinct caucuses, continuing with county caucuses, and culminating with the state convention in June. Normally, half of all delegates and alternates to the Republican National Convention are chosen by county conventions and half at the state convention.<sup>48</sup> County caucuses consist of delegates chosen at precinct caucuses several weeks in advance. Any Republican registered at the time that the county chairman calls the caucuses is eligible to participate.<sup>49</sup> The precinct caucuses take place ten to twenty-five days before the county caucuses,<sup>50</sup> must be announced by the county party chairman in the newspaper at least ten days in advance,<sup>51</sup> and their announcement is the registration deadline for participation.<sup>52</sup> For a January 5 county caucus date, as in 2008, the precinct caucuses would have been announced between December 1 and December 16 and would have been held between December 11 and 26. Furthermore, there is no reason the county party chairman could not

---

<sup>46</sup> Wyoming Republican Party, *Wyoming Repub. Party Bylaws*, art. IV, § 7(b), art. VI § 4(d) (2010), <http://actnow.gop.com/states/WY/pdf/101617%20BYLAWS.PDF> (last visited Nov. 17, 2011); Wyoming Democratic Party, *Wyoming Democratic State Central Committee Bylaws*, art. IV § 5 (2010), <http://www.wyomingdemocrats.com/ht/a/GetDocumentAction/i/%201304347> (last visited Nov. 17, 2011).

<sup>47</sup> Wyoming Republican Party, *supra* note 46, art. IV, § 2(d); Wyoming Democratic Party, *Wyoming Delegate Selection Plan For The 2008 Democratic National Convention*, 1 (2007), <http://www.wyomingdemocrats.com/ht/a/GetDocumentAction/i/1024119.pdf> (last visited Nov. 17, 2011).

<sup>48</sup> Due to Wyoming's violation of Republican National Convention rules concerning the dates on which states allocate delegates, in 2008 Wyoming was stripped of half of its delegates. Consequently, county caucuses chose almost all of Wyoming's delegates to the Republican National Convention in January, rather than the normal process of allocating half of the delegates at county conventions and half at the state convention.

<sup>49</sup> Wyoming Republican Party, *supra* note 46, art. IV, § 2(d).

<sup>50</sup> *Id.* art. IV, § 2(a).

<sup>51</sup> *Id.* art. IV, § 2(b).

<sup>52</sup> *Id.* art. IV, § 2(d).

issue the precinct caucus announcement earlier than the ten-day requirement, thus pushing the registration deadline even earlier. Stated otherwise, to participate in the Republican nominating caucus before a Presidential general election to be held on November 4, 2008, a Wyoming voter must have been a registered Republican on December 16, 2007 at the latest. To vote in the general election, on the other hand, a voter would only need to show up to the polls on Election Day. For purged voters accustomed to Election Day registration, it is highly unlikely that they would have taken the time to register in advance of the party caucuses and are consequently excluded from the party nomination process.

The Democratic Party's delegate selection process, on the other hand, does not require a round of precinct caucuses before the county convention. Rather, the county caucuses determine delegates to the Democratic State Convention, which selects delegates to the Democratic National Convention.<sup>53</sup> To participate in the county caucuses, a person need only be a registered Democrat fifteen days before the convention. For a March 8 caucus date, as in 2008, the registration deadline for registration would be February 22.<sup>54</sup> While this is slightly more direct than the Republican process and does allow for more direct citizen participation in the event, the Democratic process is still subject to some of the same concerns and institutional barriers.

The first problem with both the Democratic and Republican systems is the very early registration deadline for participation. There has been significant discussion in academic literature of the effect early voter registration cut-offs have on voter turnout.<sup>55</sup> These studies show that voter registration deadlines occurring far from Election Day tend to have a great negative effect on turnout.<sup>56</sup> The rationale is that the earlier the registration deadline, the less likely voters are paying attention to campaigns and the less likely they will have thought about registering in time to vote.<sup>57</sup> With the registration deadlines for the Wyoming caucuses falling between approximately eleven and eight months before the general election and several weeks in advance of the caucuses, there is a high probability that many voters who would otherwise have participated in the caucuses are not able to do so because they have not taken the time to register before the deadline. This problem is

---

<sup>53</sup> Wyoming Democratic Party, *supra* note 46, at 1.

<sup>54</sup> *Id.*

<sup>55</sup> See, e.g., Craig Leonard Briens & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOC. SCI. Q. 170 (2001); Highton, *Voter Registration and Turnout in the United States*, *supra* note 20, at 509; Benjamin Highton & Raymond E. Wolfinger, *Estimating the Effects of the National Voter Registration Act*, 20 POL. BEHAV. 79 (1998); Richard Timpone, *Structure, Behavior, and Voter Turnout in the United States*, 92 AM. POL. SCI. REV. 145 (1998).

<sup>56</sup> Highton, *Voter Registration and Turnout in the United States*, *supra* note 20, at 509; Highton & Wolfinger, *supra* note 55, at 93.

<sup>57</sup> Highton, *Voter Registration and Turnout in the United States*, *supra* note 20, at 509.

amplified in a state like Wyoming, which does not usually require advance voter registration. This, combined with the low levels of public information provided by the parties, likely prevents a number of voters from participating in the political process.

The problem caused by early registration deadlines is exacerbated by the general lack of public information regarding the caucuses. While most primary and general election dates are fixed, the political parties themselves decide the dates of party caucuses.<sup>58</sup> As such, the potential for a great deal of variability between election cycles always exists. This is evidenced in the most recent election cycle. The Republican Party held its 2008 county caucuses on January 5, whereas in the previous election cycle it held the caucuses between February 3 and February 29, depending on the county.<sup>59</sup> The Democratic Party, on the other hand, has been more consistent with its county caucus dates; it held the 2008 caucuses on March 8 and the 2004 caucuses between March 6 and 20.<sup>60</sup> In 2012, the Republican Party will hold its caucuses between March 5 and 10, while the Democratic Party will hold its caucuses on April 14, 2012.<sup>61</sup> These date changes make public information regarding time, place, and qualifications for participation all the more important. Wyoming law does not adequately address this need for information, leaving the responsibility to the political parties to inform voters about their respective caucuses.

The only requirements for parties to provide public information regarding caucus dates and times are found in the respective party's by-laws, not in the state's statutes. The Republican Party requires only that the county chairman "publish[] a notice of the number of Delegates to be selected from each precinct, the date, time, and place for each caucus in a newspaper(s) of general circulation in the County not less than ten (10) days prior to the Precinct Caucuses."<sup>62</sup> The Democratic Party makes a stronger effort at ensuring public awareness of meeting time, place, and purposes. The Democratic by-laws require that all meetings be "fully publicized," the persons responsible for publication "attempt to secure

---

<sup>58</sup> WYO. STAT. ANN. § 22-4-106 (2011) (stating that county conventions "shall meet in even-numbered years").

<sup>59</sup> *2004 Presidential Primaries, Caucuses, and Conventions: Wyoming Republican*, THE GREEN PAPERS, <http://www.thegreenpapers.com/P04/WY-R.phtml> (last visited Nov. 17, 2011); *2008 Presidential Primaries, Caucuses, and Conventions: Wyoming Republican*, THE GREEN PAPERS, <http://www.thegreenpapers.com/P08/WY-R.phtml> (last visited Nov. 17, 2011).

<sup>60</sup> *2004 Presidential Primaries, Caucuses, and Conventions: Wyoming Democrat*, THE GREEN PAPERS, <http://www.thegreenpapers.com/P04/WY-D.phtml> (last visited Nov. 17, 2011); *2008 Presidential Primaries, Caucuses, and Conventions: Wyoming Democrat*, THE GREEN PAPERS, <http://www.thegreenpapers.com/P04/WY-D.phtml> (last visited Nov. 17, 2011).

<sup>61</sup> Jeremy Pelzer, *Wyoming Republican Party Sets 2012 Presidential Caucus Dates*, CASPER STAR-TRIBUNE (Aug. 29, 2011, 7:00 PM), [http://trib.com/news/state-and-regional/govt-and-politics/article\\_269e07d8-4cb3-5bba-a939-0c6534819a9f.html](http://trib.com/news/state-and-regional/govt-and-politics/article_269e07d8-4cb3-5bba-a939-0c6534819a9f.html).

<sup>62</sup> Wyoming Republican Party, *supra* note 46, art. IV, § 2(b).

publication through news releases to all forms of news media,” and publications must be published at least seven days prior to when applications for selection as a delegate to the Democratic National Convention are due.<sup>63</sup> Even with this, it is unlikely that the seven day period would be sufficient to allow for any significant number of people to register.

The Wyoming caucuses, as currently conducted, have notoriously low turnout. While the exact figures are unavailable for Republican caucus participation, the caucus planner for the Wyoming Republican Party reported that turnout at the county convention in Laramie County, the state’s most populous county which accounts for approximately one-sixth of the state population, was 236 participants in 2008 and only 65 in 2000, both of which featured contested races for the nomination.<sup>64</sup> For 2008, this is approximately 1 participant for every 80 registered Republicans in Laramie County.<sup>65</sup> For the Democratic Party caucuses, a total of 8753 voters participated in 2008. This resulted in approximately 2 participants per every 13 registered Democrats in Wyoming.<sup>66</sup> In contrast, South Dakota, the least populous of Wyoming’s neighboring states, had over 66,000 Republicans, or 2 per every 7 registered Republicans, participate in their primary.<sup>67</sup> Furthermore, almost 98,000 Democrats in South Dakota voted in the presidential primary, resulting in a turnout rate of 1 in 2.<sup>68</sup> Even Colorado, the only neighboring state to use a precinct caucus system like Wyoming’s, saw around 70,000 Republicans and 120,000 Democrats participate in precinct caucuses. Colorado’s participation rates are equivalent to approximately 1 in 15 registered Republicans and approximately 2 in 15 registered Democrats.<sup>69</sup>

There are several administrative changes that would increase voter access and voter turnout in the Presidential nomination process if implemented by Wyoming. First, extending the amount of time before automatic purges from one general election to two general elections, thereby allowing voters to maintain their registration while permitting them to cast ballots only in Presidential election

---

<sup>63</sup> Wyoming Democratic Party, *supra* note 46, art. VII, § 2.

<sup>64</sup> Tom Sansonetti, *Wyoming Conventions an Unqualified Success*, WYOMING TRIBUNE EAGLE, Jan. 9, 2008, at A11.

<sup>65</sup> *Statewide Summary of Wyoming Voter Registration*, WYOMING SECRETARY OF STATE (Feb. 19, 2008), [http://soswy.state.wy.us/Elections/Docs/VRStats/2008VR\\_stats.pdf](http://soswy.state.wy.us/Elections/Docs/VRStats/2008VR_stats.pdf).

<sup>66</sup> *Id.*; Wyoming Democratic Party, *Unofficial Caucus Results* (Mar. 8, 2008), <http://www.wyomingdemocrats.com/ht/a/GetDocumentAction/i/1144780.pdf>.

<sup>67</sup> *2008 South Dakota Official Primary Election Results Statewide Turnout*, SOUTH DAKOTA SECRETARY OF STATE (June 3, 2008), [http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections\\_electioninfo08\\_primaryto.shtm](http://sdsos.gov/content/viewcontent.aspx?cat=elections&pg=/elections/pastelections_electioninfo08_primaryto.shtm).

<sup>68</sup> *Id.*

<sup>69</sup> *Colorado Caucus Results*, NEW YORK TIMES (Feb. 5, 2008), <http://politics.nytimes.com/election-guide/2008/results/states/CO.html>; *March 2008 Voter Registration Numbers*, COLORADO SECRETARY OF STATE (Mar. 13, 2008), [http://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2008/March/mar08\\_party.doc](http://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2008/March/mar08_party.doc).

cycles, would impose a minimal burden on the state while greatly reducing the risk of voters being excluded. For example, none of the states that border Wyoming remove voters from their registration lists after not voting in only one election.<sup>70</sup> Idaho<sup>71</sup> and Montana<sup>72</sup> wait two election cycles before purging voters, while Nebraska and Utah, statutorily prohibit the removal of voters for inactivity.<sup>73</sup> When compared to its neighboring states, Wyoming law is much more aggressive regarding purges of voters. Bringing Wyoming law in line with the other states in the region would impose minimal burdens and would result in an increased opportunity for citizen participation in the election process.

Second, concrete dates and public notification regarding the caucuses would increase turnout. With the minimal amount of public notification currently required, party caucuses often pass without much, if any, fanfare. A more stringent requirement in public notification is likely to increase the amount of citizen participation because a greater proportion of the population would be aware of the time, date, and location of the caucuses.

### *C. Independent Ballot Access*

Elections are an expression of the public sentiment. As such, provisions that restrict such expression by either preventing as representative a portion of the population as possible from voting or by restricting voter choices go against this basic purpose of elections. One area where Wyoming could improve is in allowing more options for voter choices by easing restrictions on ballot access for independent candidates.

#### *1. Ballot Access for Recognized Political Party Candidates*

Major party candidates for offices other than President are determined through a primary election process in Wyoming, with the winner of the primary becoming the party's nominee in the general election. A major party is defined as a party "whose candidate for any one (1) of the offices of United States house of representatives, governor or secretary of state, received not less than ten percent (10%) of the total votes cast for that office in the most recent general election."<sup>74</sup> Presently, the Democratic and Republican parties are the only major parties in

---

<sup>70</sup> COLO. REV. STAT. § 1-2-605 (2011); IDAHO CODE ANN. § 34-435 (2011); MONT. CODE ANN. § 13-2-402 (2011); NEB. REV. STAT. § 32-329(2) (2011); S.D. CODIFIED LAWS § 12-4-19.4 (2011); UTAH CODE ANN. § 20A-2-305(1) (LexisNexis 2011).

<sup>71</sup> IDAHO CODE ANN. § 34-435.

<sup>72</sup> MONT. CODE ANN. § 13-2-402.

<sup>73</sup> NEB. REV. STAT. § 32-329(2); UTAH CODE ANN. § 20A-2-305(1).

<sup>74</sup> WYO. STAT. ANN. § 22-1-102(a)(xvii) (2011).

Wyoming.<sup>75</sup> To become a candidate in the primary, a person must file a nomination application certifying that the person is eligible for the office and a member of the party whose nomination he or she seeks.<sup>76</sup> Assuming the application is filed correctly and the person meets the eligibility criteria, the person's name is then placed on the primary ballot.

Minor and independent party candidates do not have the same processes for securing ballot access. First, a minor party is officially defined as a party "whose candidate for any one (1) of the offices of United States house of representatives, governor or secretary of state, received not less than two percent (2%) nor more than ten percent (10%) of the total votes cast for that office in the most recent general election."<sup>77</sup> The Libertarian Party is the only minor party recognized by Wyoming.<sup>78</sup> Minor party candidates are nominated by party convention and are guaranteed ballot access.<sup>79</sup>

## 2. *Ballot Access for Independent or Unrecognized Party Candidates*

Independent candidates or persons whose party is not a recognized party by the state, however, must go through a more stringent nomination process to be placed on the ballot. An independent candidate can secure ballot access by petition, which requires a candidate to file an application accompanied by the signatures of eligible registered voters equal to two percent of the number of total votes cast for United States representative in the most recent election cycle.<sup>80</sup> This requirement, while it appears low, may prevent candidates who would otherwise have garnered a non-trivial percentage of the vote from gaining ballot access. This prerequisite may also impose higher burdens on candidates without existing support networks or party structures. In essence, this largely insulates established parties from challenges by independent or unrecognized party candidates.

The high number of signatures required for independent ballot access imposes the biggest barriers to independent candidates intending to run for statewide seats. Not only will the independent candidate's lack of an existing party structure be a disadvantage, but also the thresholds for ballot access will be much higher. In the 2008 election cycle, for example, fewer than 250,000 people voted in the race for

---

<sup>75</sup> See *Political Party Information*, WYOMING SECRETARY OF STATE, <http://soswy.state.wy.us/Elections/PoliticalPartyInfo.aspx> (last visited Nov. 17, 2011).

<sup>76</sup> WYO. STAT. ANN. § 22-5-204.

<sup>77</sup> *Id.* § 22-1-102(a)(xviii).

<sup>78</sup> *Political Party Information*, WYOMING SECRETARY OF STATE, <http://soswy.state.wy.us/Elections/PoliticalPartyInfo.aspx> (last visited Nov. 17, 2011).

<sup>79</sup> WYO. STAT. ANN. §§ 22-4-303; 22-5-101.

<sup>80</sup> *Id.* § 22-5-301.

United States Representative.<sup>81</sup> To gain ballot access in 2010 for a statewide race, an independent candidate had to file, along with his or her application, a petition containing the signatures of approximately five thousand registered voters.<sup>82</sup> For candidates without preexisting party structures or political networks, it has been and likely will remain difficult to acquire the requisite number of voter signatures to gain access to the ballot.

The Wyoming election of 2010 is an excellent example of why these provisions are important. The 2010 election included an open governor's race, a crowded Republican primary and generally weak Democratic candidates. Before the election, the Constitution Party of Wyoming sought to obtain ballot access as a provisional party, but fell short.<sup>83</sup> After this failed, a candidate aligned with the Constitution Party sought to obtain ballot access as an independent candidate, but also fell short.<sup>84</sup> Nonetheless, this candidate ran a write-in campaign for governor and obtained 7.3% of the vote, placing third behind the Republican and Democratic candidates, but ahead of the Libertarian candidate who was listed on the ballot.<sup>85</sup> In some counties, the write-in candidate actually placed second, ahead of the Democratic candidate.<sup>86</sup> Although a general election victory would have been very unlikely, had Wyoming's ballot access laws been more accessible, it is very likely the independent candidate would have received substantially more votes and may have been able to challenge for a second place finish.

The simplest solution to this issue is for Wyoming to set specific signature requirements above which a candidate will automatically gain ballot access. These limits should be non-trivial to minimize voter confusion or "ballot fatigue,"<sup>87</sup> but

---

<sup>81</sup> See *2008 General Election Results*, WYOMING SECRETARY OF STATE, <http://soswy.state.wy.us/Elections/Docs/2008/08Results/General/SW-Candidates.pdf> (last visited Nov. 17, 2011).

<sup>82</sup> This number was calculated by multiplying the approximately 250,000 voters by the 2% signature requirement, which comes out to approximately 5000 voters.

<sup>83</sup> *Wyoming Constitution Party Lacks 388 Valid Signatures*, BALLOT ACCESS NEWS (June 25, 2010), <http://www.ballot-access.org/2010/06/25/wyoming-constitution-party-petition-lacks-388-valid-signatures>.

<sup>84</sup> *Haynes Fails to Qualify as Independent Candidate for Wyoming Governor*, CASPER STAR TRIBUNE (Aug. 27, 2010, 9:18 AM), [http://trib.com/news/state-and-regional/article\\_9b316b46-b1ee-11df-8120-001cc4c03286.html](http://trib.com/news/state-and-regional/article_9b316b46-b1ee-11df-8120-001cc4c03286.html).

<sup>85</sup> *Taylor Haynes Finished Third in Wyoming Gubernatorial Race*, CASPER STAR TRIBUNE (Nov. 10, 2010, 5:52 PM), [http://trib.com/news/state-and-regional/article\\_548b0fbe-ed2e-11df-a6a3-001cc4c002e0.html](http://trib.com/news/state-and-regional/article_548b0fbe-ed2e-11df-a6a3-001cc4c002e0.html).

<sup>86</sup> Write-in votes outnumbered votes for the Democratic candidate in Campbell, Converse, Crook, Niobrara, and Weston counties. See *Statewide Candidates Official Summary—Wyoming General Election*, WYOMING SECRETARY OF STATE (Nov. 2, 2010), [http://soswy.state.wy.us/Elections/Docs/2010/Results/General/2010\\_Statewide\\_Candidates\\_Summary.pdf](http://soswy.state.wy.us/Elections/Docs/2010/Results/General/2010_Statewide_Candidates_Summary.pdf).

<sup>87</sup> See, e.g., R. Darcy & Anne Schneider, *Confusing Ballots, Roll-Off, and the Black Vote*, 42 THE WESTERN POLITICAL QUARTERLY 347, 348 (1989). Ballot fatigue, or "roll-off" occurs when voters, faced with lists of names or positions that they do not recognize, fail to cast a vote or to finish completing their ballots. *Id.*



attainable, so that non-trivial candidates are not excluded from the ballot simply because they have declined to seek a party nomination. Numbers seen in states such as Idaho, which requires 1000 signatures for a statewide elected office, 500 for a congressional district, and 50 for a state legislative seat,<sup>88</sup> are in the range of what an independent candidate could expect to obtain, but would still weed out gadfly candidates who do not meaningfully contribute to the public discourse.

### III. CAMPAIGN FINANCE

The second major area of election law the Wyoming Legislature should revise is campaign finance regulation. This includes revising campaign finance restrictions and the regulation of state political action committees. Campaign finance regulations are primarily intended to protect vote integrity. If Wyoming does not regulate campaign finances, there exists a heightened risk that interested parties will be able to wield a disproportionate influence on campaigns and legislation. As such, campaign finance law should prevent undue influence without excessively infringing upon citizen participation.

Under Wyoming law, only individuals, political parties, and political action committees or candidate campaign committees are permitted to contribute funds or election assistance in aid of or in opposition to political campaigns.<sup>89</sup> All corporations, religious groups, trade organizations, and all other profit or non-profit entities not specifically excepted are prohibited from contributing anything of value directly to political campaigns.<sup>90</sup> These organizations, however, may make independent expenditures in support of or opposition to candidates.<sup>91</sup> Furthermore, contributions from individuals other than the candidate or the candidate's immediate family are capped at \$1000 per election and \$25,000 total in any two-year electoral cycle.<sup>92</sup> Primary and general elections are considered separate elections for the purposes of this section, thereby allowing a total contribution of \$2000 to a given candidate in any two-year election cycle.<sup>93</sup>

Wyoming's election finance statutes contain several provisions that may not serve election law's purpose of ensuring a fair and open election, but rather result in institutional advantages to certain entities and disadvantages to others. Many of the problems faced in Wyoming have been addressed by academic writings, which

---

<sup>88</sup> IDAHO CODE ANN. § 34-708 (2011).

<sup>89</sup> WYO. STAT. ANN. § 22-25-102(b) (2011).

<sup>90</sup> *Id.* § 22-25-102(a).

<sup>91</sup> *Id.* § 22-25-102(k).

<sup>92</sup> *Id.* § 22-25-102(c).

<sup>93</sup> *Id.*



indicate that Wyoming's system needs improvement.<sup>94</sup> While the full extent or gravity of the problem is uncertain, the circumstances in Wyoming are likely to show the same results as similar circumstances elsewhere.

The first institutional problem is Wyoming's low individual contribution limits of \$1000 per race. While contribution limits may prevent a small number of donors from exerting unduly disproportionate influence, contribution limits should be high enough to allow quality challengers to raise enough money to effectively compete against incumbents with their institutional advantages. Incumbents usually have significant advantages over challengers in name recognition, functioning political networks, and core groups of donors to which they can turn to finance reelection. To combat these advantages, challengers need to be able to raise money to increase name recognition, develop political networks, and wage a professional campaign. Studies in political science show that increased incumbent spending has negligible effect on the vote, whereas the level of challenger spending is a significant factor in the viability of the challenger's campaign.<sup>95</sup> Accordingly, restrictions on access to money with which to wage a campaign disproportionately affect challengers over incumbents. Low contribution limits are a barrier to quality challengers by making it more difficult for them to raise sufficient funds to overcome the incumbent's advantages. In the event of a close race, the ability of a challenger to mount a well-funded campaign may be the difference between victory and defeat.

Wyoming is not the only state that has low personal contribution limits. Colorado, for example, inserted a provision into its state constitution capping personal campaign contributions at \$500 per year to statewide candidates, \$200 per year to candidates running in smaller districts, \$2500 to the statewide level, and \$3000 per year to all levels of political parties combined.<sup>96</sup> Unlike Wyoming, however, Colorado provided for inflation, with contributions increasing every four years in conjunction with the United States Bureau of Labor consumer price index.<sup>97</sup> After only two adjustments, the contribution limits have already increased to \$550 for statewide candidates, \$2825 for statewide parties, and \$3400 for all levels of political parties.<sup>98</sup> These automatic inflation adjustment provisions prevent the contribution limits from constricting over time. Absent such provisions, rising inflation would effectively decrease the contribution limits by reducing the "per dollar" buying power while keeping the contribution amount static. Even though Colorado's inflation adjustment helps remedy the problems associated with contribution limitations, challengers are still disadvantaged.

---

<sup>94</sup> See, e.g., Robert S. Erickson & Thomas R. Palfrey, *Campaign Spending and Incumbency: An Alternative Simultaneous Equations Approach*, 60 J. POL. 355 (1998).

<sup>95</sup> *Id.* at 355.

<sup>96</sup> COLO. CONST. art. XXVIII, § 3.

<sup>97</sup> *Id.* at § 3(15).

<sup>98</sup> 8 COLO. CODE REGS. § 1505-06 (2010).

Colorado is also different on account of having instituted voluntary spending caps on candidates.<sup>99</sup> Spending caps may have both positive and negative effect on the ability of challengers to effectively compete with incumbents. While such provisions are a barrier to incumbents using their position to amass a sizeable war chest to simply outspend challengers, they also impede challengers from raising funds sufficient to overcome the advantage of incumbency. If funds are limited, both challengers and incumbents are kept to a presumed artificially low level of campaign spending, thus making the incumbent's advantages in other areas all the more difficult to overcome. However, the voluntary nature of the limits largely makes the decision of whether to abide by them a tactical decision rather than an effective regulation of election finance.

When compared to other states, Wyoming's contribution limits are on the low end of the spectrum, but are not unusually low.<sup>100</sup> However, other states with low contribution limits have included provisions automatically adjusting the limits for inflation, thereby ensuring that the limits do not shrink over time. Wyoming has not passed a statute adjusting contribution limits for inflation. The failure to include such a provision suggests that Wyoming lawmakers have been unwilling to address the problem of shrinking contribution limits. With only minimal effort, contribution limits could be kept at a stable and reliable level, allowing both challengers and incumbents the ability to assess what will be needed to run a viable campaign and how many donors will be needed to finance it.

Another significant problem in Wyoming election finance regulation is the absence of limitations on donations to and from political action committees. As is the case with much of Wyoming law, state regulation of political action committees is spartan. There are no regulations addressing political action committees outside of the state code, and even the code's provisions impose very little regulation. The only two substantive provisions addressing political action committees require only that political action committees file statements of formation within ten days and that committees file itemized statements of receipts and expenditures at least seven days prior to an election and within ten days after.<sup>101</sup>

Limitations on receipts or expenditures are noticeably absent. The Wyoming state code does not limit political action committees to the \$1000 per election restriction on individual contributors, instead it only subjects them to the \$25,000 aggregate limit per election cycle. This creates a loophole for interested parties to

---

<sup>99</sup> COLO. CONST. art. XXVIII, § 4.

<sup>100</sup> For example, Wyoming's individual contribution limit is \$1000 per candidate per election compared to \$500 per statewide candidate and \$200 for candidates running at lower levels in Colorado, \$5000 per statewide candidate and \$1000 per legislative candidate in Idaho, and \$4000 per statewide candidate and \$1000 per legislative candidate in South Dakota. COLO. CONST. art. XXVIII, § 3; IDAHO CODE ANN. § 67-6610A (2011); S.D. CODIFIED LAWS § 12-27-7 (2011); WYO. STAT. ANN. § 22-25-102(c) (2011).

<sup>101</sup> WYO. STAT. ANN. §§ 22-25-101, -106.

get around meaningful campaign contribution restrictions. The Wyoming state code does not place restrictions on who may form a political action committee or for what purpose. A donor need only fill out the requisite paperwork to establish a political action committee, and the statutes limiting personal contributions are suddenly inconsequential. The donor can give as much as he or she wants to the political action committee, limited only by the \$25,000 aggregate limit per election cycle,<sup>102</sup> and distribute that money free of the restrictions on personal contributions. The only cost of opting out of state regulation on campaign contributions is the inconvenience of filling out and filing the paperwork required to form the committee and the filing of reports required before and after an election.

This problem recently came to the public attention in the 2006 Wyoming election cycle, where a donor legally formed a political action committee and used it to contribute more than \$11,000 to a county commission candidate.<sup>103</sup> In September 2006, a local developer formed the “Committee to Elect Natrona County Candidates,” a political action committee, in Natrona County, Wyoming.<sup>104</sup> The officers of the political action committee were the developer, his son, and his wife. The developer was also the only donor, who gave the committee over \$11,500. The committee then gave \$11,190 to one candidate for the county commission and \$250 to another. After the district attorney conducted an investigation, he determined the arrangement was legal.<sup>105</sup> For campaign contribution regulation to have any substance, the Wyoming state code must close loopholes such as this.

As the law stands, political action committees create a major loophole that provides an opportunity for high-dollar donors to exert disproportionate influence on political campaigns. Furthermore, political action committees are not restricted from accepting funds from corporations or other entities that are otherwise prohibited from contributing to political parties or candidates.<sup>106</sup> While not altogether unusual,<sup>107</sup> the ability of a corporation to give unlimited amounts<sup>108</sup>

---

<sup>102</sup> *Id.* § 22-25-102(c)(ii).

<sup>103</sup> Jared Miller, *Panel: Raise Campaign Limits*, CASPER STAR-TRIBUNE (Aug. 1, 2007), <http://www.casperstartribune.net/articles/2007/08/01/news/wyoming/d61e3ddab868de478725732a0003fab8.txt>.

<sup>104</sup> *Id.*

<sup>105</sup> Tom Morton, *Legislators Look at Campaign Loophole*, CASPER STAR-TRIBUNE (May 23, 2007), <http://www.casperstartribune.net/articles/2007/05/24/news/casper/0307a35642ef4341872572e400022dde.txt>.

<sup>106</sup> WYO. STAT. ANN. § 22-25-102(a).

<sup>107</sup> *See* COLO. CONST. art. 28, § 3(4) (prohibiting corporate contributions except that corporations may form a political committee and solicit donations from employees, etc.); IDAHO CODE ANN. § 67-6610A (2011); UTAH CODE ANN. § 20A-11-601(6) (LexisNexis 2011) (prohibiting corporate contributions only if the corporation formed within ninety days before the general election and has not filed a statement of organization).

<sup>108</sup> The \$25,000 per year aggregate limit in WYO. STAT. ANN. § 22-25-102(c)(ii) only applies to individuals.

to political campaigns by forming a political action committee largely renders the provisions restricting direct contribution to campaigns meaningless.

The other major sources of funds in Wyoming election finance are political parties. Political parties in Wyoming are not limited by the state in how much they can receive from an individual donor, although federal law limits individual contributions to state and local political parties to \$10,000 per calendar year.<sup>109</sup> The law also does not restrict funds contributed by political parties and their affiliates to candidates,<sup>110</sup> although it does prohibit parties from showing preference in a primary campaign.<sup>111</sup>

Improvements to Wyoming's election finance law would require minimal effort. Personal contribution limits are presently on the low side and will only get lower relative to buying power as inflation increases. This problem could be addressed in two ways. First, the legislature could raise the personal contribution limit, presumably to a level roughly equivalent to what \$1000 would have bought at the time of original enactment, and periodically take it upon itself to reset limits to address inflation. Alternatively, the legislature could determine a preferred limit in current dollars and include a provision to adjust the limit in conjunction with inflation automatically. Similar provisions are already in effect in several neighboring states and would have the positive effect of stabilizing the proportional amount that a contributor could give with minimal administrative or legislative costs. As such, the second option is preferable because it is a stable regulation that allows for consistent individual involvement in campaign financing and does not disadvantage candidates as time progresses.

Another way Wyoming's election finance laws could be improved would be through closing the loophole that leaves political action committees outside of state election finance regulation. Depending on the legislature's view of political action committees, effective regulation would require only that Wyoming impose limits on either contributions to political action committees or contributions from political action committees. If the legislature views the problem of political action committees as individual contributors being able to put too much of their own money into a race and thus wield disproportionate influence, the legislature could put limits on contributions to political action committees, freeing the committees to dispense of the money received as they see fit. If, however, the legislature sees the problem as political action committees themselves having undue influence on individual legislators, it could put limitations on the amount of money a committee could inject into a race, leaving contributors unrestrained in how much money they can give to the committee. The most likely result

---

<sup>109</sup> 2 U.S.C. § 441a(a)(1)(D) (2006); WYO. STAT. ANN. § 22-25-102(f).

<sup>110</sup> WYO. STAT. ANN. §§ 22-25-102(f), -102(c).

<sup>111</sup> *Id.* § 22-25-104.

would be for the legislature to place limits on individual donations to political action committees, as this would eliminate the loophole while still allowing the committees to aggregate influence by allowing for large donations.

Limiting contributions to or from political action committees is not the only possible solution. The most comprehensive regulation would be to impose limits on both contributions to and from political action committees. However, because few neighboring states have decided to regulate both, it is unlikely Wyoming would switch from the least regulation to among the most stringent regulation in the region.

Another option, implemented by Missouri, Oregon, Utah, and Virginia is removing all restrictions on campaign contributions, at least from individuals.<sup>112</sup> Such a move would eliminate the incentive to use political action committees as devices to circumvent individual contribution limits. However, the general population would be unlikely to favor an entirely unregulated election contribution scheme and removal of all restrictions is therefore an unlikely option. Rather, the simplest and most likely solution would be for Wyoming to cap donations either to or from political action committees. By closing the loophole at either of these ends, the incentives for high-dollar donors to use political action committees as tools to circumvent individual contribution limits would be largely negated.

#### IV. CONCLUSION

Wyoming's election laws, while ahead of the curve in some areas, could be improved with some relatively minor changes. Although Wyoming's Election Day registration statutes provide for easy access to the polls, its aggressive voter purges and needless prohibition of voter registration drives erect unnecessary barriers to participation. Independent and unrecognized party candidates are subject to needlessly high barriers to get their names on the ballot. Wyoming's election finance system has contribution limits, which have not been updated in years, and contain loopholes that can largely defeat their intended purpose. Legislative action to fine-tune these laws would improve the fairness, openness, and representative nature of our elections, and would further the underlying goals of election law.

---

<sup>112</sup> *Campaign Contribution Limits: An Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=16594> (last updated Oct. 3, 2011).