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November 4, 2016



Edward Murray
Wyoming Secretary of State
2020 Carey Avenue
Suites 600 and 700
Cheyenne, WY 82002-0020

Secretary Murray,

Your office has illegally directed Wyoming County Clerks to suspend the right to vote for certain naturalized citizens unless and until they are able to provide documentary proof of citizenship, such as a naturalization certificate, in-person to a potentially inaccessible county clerk's office. We urge you to immediately cease-and-desist this discriminatory and unconstitutional policy so that no naturalized citizen is disenfranchised in next week's election, or any election thereafter.

This policy unconstitutionally targets voters based solely on the fact that they may have once been noncitizens when they applied for a Wyoming driver's license. But it is not unusual for a noncitizen to apply for a Wyoming driver's license and then later become a naturalized citizen and register to vote, especially when driver's licenses for resident aliens last up to 10 years. Their names may also appear as noncitizens in the Wyoming Department of Transportation (WYDOT) database because of data entry errors.

Your office must also consider the impact of county clerks sending confusing, intimidating letters to newly naturalized citizens that baselessly accuse them of being noncitizens, and which suggest that they will be in trouble if they attempt to exercise their fundamental right to vote. Fearing legal consequences, many of these voters may simply give up voting rather than comply with this onerous and unconstitutional requirement.

This policy violates the United States Constitution in the following ways:

I. Your policy discriminates against United States citizens based on their national origin

First, your policy discriminates against United States citizens on the basis of national origin in violation of the Equal Protection Clause of the Fourteenth Amendment. Although both native-born and naturalized citizens register to vote by swearing under penalty of perjury

that they are United States citizens—an appropriate gatekeeping method recently approved by the Court of Appeals for the Tenth Circuit, *see Fish v. Kobach*, --- F.3d ---, 2016 WL 6093990, at *18 (10th Cir. Oct. 19, 2016)—you require only naturalized citizens to satisfy this extra requirement before they can exercise their right to vote. Reliance on outdated and faulty WYDOT database information is not a sufficiently compelling reason for this discrimination.

It is offensive to “assum[e] that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born.” *Schneider v. Rusk*, 377 U.S. 163, 165 (1964). For that reason, courts have struck down discriminatory voting requirements that single out naturalized citizens. *See, e.g., Boustani v. Blackwell*, 460 F. Supp. 2d 822, 825-27 (N.D. Ohio 2006) (requiring documentary proof of citizenship of naturalized citizens but not native-born citizens is unconstitutionally discriminatory); *State ex rel. Williams v. Moorhead*, 148 N.W. 552, 557 (Neb. 1914) (“We are unable to see [the potential for fraud] where a naturalized citizen is attempting to register, any more than it would if one claiming to be native born were making application.”); *Attorney General v. City of Detroit*, 44 N.W. 388, 392-93 L.R.A. 99 (Mich. 1889) (“This distinction between native-born and naturalized electors is an unfair one, and . . . entirely unnecessary in order to prevent fraud . . . A law that treats these men as men whose oaths cannot be taken in their own interest, while it permits a native-born citizen to prove his standing as a voter by his own testimony, . . . is not only unjust, but unconstitutional, unless applied to all.”).

Nor is your policy justified under Wyoming law. Wyoming law only permits elections officials to strike a voter from the registration lists “*after* a thorough investigation” into their qualifications—not before. W.S. § 23-3-105 (emphasis added). Immediately nullifying a voter’s registration simply because their name is flagged on an outdated or possibly erroneous WYDOT database, without any attempt to account for the difficulties of obtaining naturalization certificates, is irresponsible and hardly constitutes a “thorough investigation.” And in any event, Wyoming laws must be interpreted in a way that complies with the United States Constitution.

II. Your policy imposes an unlawful poll tax for those who do not have a naturalization certificate

Second, your policy imposes an unlawful poll tax on naturalized citizens who would be forced to spend \$345 for a new or replacement naturalization certificate, or \$135 for a United States passport that they do not need, in violation of the Twenty-Fourth Amendment and the Equal Protection Clause.¹ *See Harman v. Forssenius*, 380 U.S. 528 (1965); *Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966); *Boustani*, 460 F. Supp. 2d at 826 (requiring naturalization certificates imposes a poll tax); *Milw. Branch of NAACP v. Walker*, 851 N.W.2d 262, 277 (Wis. 2014) (unlawful to require voters to pay money for a document, e.g., a birth certificate, in order to vote).

¹ There are many reasons why a naturalized citizen may no longer possess a valid naturalization certificate. They may be lost, they may have changed their names since naturalization, or for transgender individuals, the gender identification on the certificate may be inaccurate.

III. Your policy imposes an undue burden on the right to vote

Third, your policy imposes an undue burden on the right to vote for those who not only have to pay for a new or replacement naturalization certificate, but also have to wait up to a year for their naturalization certificate applications to be processed. *See Boustani*, 460 F. Supp. 2d at 825. The voter is then disenfranchised in every single Wyoming election that occurs while the application is pending. In addition, the policy imposes an undue burden for voters who cannot easily bring these documents in-person to the one county clerk's office situated in their county, such as voters who are elderly, have disabilities, or other accessibility issues.

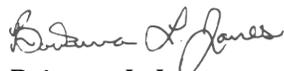
Voting restrictions that impose an undue burden on voting—even for a single person—are unconstitutional. *See Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). As the Seventh Circuit Court of Appeals recently explained: “The right to vote is personal and is not defeated by the fact that 99% of other people can secure the necessary credentials easily.” *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016).

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“There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). This right is just as precious to naturalized citizens as to native-born citizens. “There is no such thing as a second-class citizen or a second-class American. Frankly, without naturalized citizens, there would be no America.” *Boustani*, 490 F. Supp. 2d at 877. It is “shameful to imagine” that your policy is an example of how the State of Wyoming says “‘thank you’ to those who helped build this country.” *Id.*

In order to comply with the United States Constitution, we urge your office to immediately cease-and-desist this policy and promptly instruct all county clerks to disregard the list of alleged noncitizens that your office has provided to them, and to allow *all* duly registered voters to cast a regular ballot in this election.

Sincerely,



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Executive Director
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