John H. Robinson, WSB #6 – 2828
Marci C. Bramlet, WSB #7 – 5164
ROBINSON WELCH BRAMLET LLC
172 Center Street, Suite 202
P.O. Box 3189
Jackson, Wyoming 83001
Telephone: 307.733.7703
Facsimile: 307.201.5546
john@lawrwb.com
marci@lawrwb.com

Megan Cooney (Cal. Bar # 295174)
*Admitted pro hac vice*
GIBSON DUNN & CRUTCHER, LLP
3161 Michelson Drive,
Irvine, CA 92612-4412
Telephone: 949.451.4087
mcooney@gibsondunn.com

Peter S. Modlin (Cal. Bar # 151453)
*Admitted pro hac vice*
GIBSON DUNN & CRUTCHER, LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
Telephone: 415.393.8392
pmodlin@gibsondunn.com

*Attorneys for Plaintiffs*

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT**

**IN AND FOR TETON COUNTY, WYOMING**

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| DANIELLE JOHNSON, ET AL., | ) | |
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| Plaintiffs, | ) | |
| | ) | |
| v. | ) | |
| | ) | Case No. 18853 |
| STATE OF WYOMING, ET AL., | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST ENFORCEMENT OF MEDICATION ABORTION BAN**

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COME NOW Plaintiffs, by and through undersigned counsel, in support of their *Motion for Temporary Restraining Order Against Enforcement of Medication Abortion Ban,* hereby state as follows:

## INTRODUCTION AND DISPOSITION REQUESTED

During the 2023 session, the Wyoming legislature passed two statutes restricting abortions. One bans all abortions with limited exceptions and one bans use of medication for abortions, with different limited exceptions. *See* House Enrolled Act Number 88 (House Bill 152), Wyo. Stat. § 35-6-120 to 35-6-138 ("Wyoming Criminal Abortion Ban"); Senate Enrolled Act Number 93 (Senate File 109), § 35-6-120 ("Wyoming Medication Abortion Ban").[1] The Criminal Abortion Ban became effective on or about March 18, 2023.

At a hearing on March 22, 2023, the Court issued a temporary restraining order enjoining enforcement of the Criminal Abortion Ban, the basis for which is set forth in the Court's April 17, 2023 Order Granting Motion for Temporary Restraining Order ("TRO Order"). In particular, the Court found that Plaintiffs had demonstrated irreparable injury and a likelihood of success on the merits of their claim that the Criminal Abortion Ban violates article 1, section 38 of the Wyoming Constitution.

The Medication Abortion Ban was signed by Governor Gordon on March 17, 2023 and provides an effective date of July 1, 2023. *See* Senate Enrolled Act No. 93, Section 3. Because virtually all abortions in Wyoming are medication abortions, the Medication Abortion Ban appears calculated to effect a back-door ban on abortions. In addition, the provisions of the Medication Abortion Ban conflict with the Criminal Abortion Ban, such that it is possible an abortion could be legal under the Criminal Abortion Ban, but use of medication would be illegal under the

[1] The two different abortion-related statutes both adopt different versions of Wyo. Stat. § 35-6-120.

Medication Abortion Ban. Such a result will impose even greater irreparable injury on Plaintiffs and other Wyoming citizens while furthering no conceivable governmental interest.

This Court should grant a temporary restraining order enjoining Defendants from enforcing the Medication Abortion Ban during the pendency of this action.

## STATEMENT OF FACTS

In the 2022 legislative session, the Wyoming State Legislature adopted House Bill 92 ("Wyoming Trigger Ban"), which prohibited abortion at any point during a woman's pregnancy, subject to three limited exceptions where (1) an abortion was necessary to protect a woman's life or to prevent "a serious risk of death or of substantial and irreversible impairment of a major bodily function," (2) "the pregnancy is a result of incest as defined by W.S. § 6-4-402," or (3) a patient's pregnancy was the result of "sexual assault as defined by W.S. § 6-2-301." HB 0092 provided penalties of 14 years in prison. Wyo. Stat. § 35-6-110.

During the 2023 legislative session, HB 00152 was adopted, repealing the Wyoming Trigger Ban and replacing it with another abortion ban. HB 0152 has different exceptions for situations where (1) in a physician's reasonable medical judgment an abortion is necessary to protect a woman's life or to prevent "a serious and permanent impairment of a life-sustaining organ," (2) the pregnancy is a result of sexual assault or incest that are reported to a law enforcement agency, or (3) a number of enumerated complications exist, including ectopic pregnancy, molar pregnancy, lethal fetal anomaly, or fetal demise, as defined by the statute. Wyo. Stat. §§ 35-6-122(a)(i) & 124.

Also during the 2023 legislative session, SF 109 was passed, providing that "it shall be unlawful to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person." Wyo. Stat. § 35-6-120(a). The Medication Abortion Ban has yet a different set of exceptions for 1) certain types of contraceptives; 2) sexual assault and

incest; 3) "natural miscarriage;" and 4) "[t]reatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment," but expressly excluding any such peril resulting from mental or emotional conditions. Wyo Stat. § 35-6-120(b).

Penalties for violating the Medication Abortion Ban include a prison term of up to six months and a fine of up to $9,000. Although the statute exempts from prosecution "[a] woman upon whom a chemical abortion is performed or attempted," it is unclear if this would apply to a woman who herself obtains or uses medication for an abortion. Wyo. Stat. § 35-6-120(d).

Under Wyoming law, the Department of Health, Vital Statistics Service maintains statistics for abortions performed in Wyoming. Wyo. Stat. §§ 35-6-131 & 132. Among other things, the state compiles information on the number, timing and types of abortion procedures performed, as well as any complications associated with abortions. Wyo. Stat. §§ 35-6-131(a)(ii) & (iii). In the last two years for which reports are available (2020 and 2021), all but a single abortion in the state was a medication abortion, and zero patient complications were reported for these abortions. *See* Exs. 1 and 2.[2]

Plaintiffs are Wyoming reproductive-aged women, licensed physicians, a clinic that provides reproductive health care services to pregnant patients, and a Wyoming non-profit agency that ensures impoverished women may access abortion services. Unless this Court issues a TRO, Wyoming's Medication Abortion Ban will effectively strip Plaintiffs and Wyoming women of their right to control their own health care. Even where abortion is otherwise legal, it could be illegal to use medication for the abortion under the Medication Ban, regardless of whether

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[2] These official state reports can be accessed at https://health.wyo.gov/wp-content/uploads/2021/06/2020-Induced-Termination-of-Pregnancy-ITOP-Report.pdf and https://health.wyo.gov/wp-content/uploads/2022/05/WDH-VSS-State-ITOP-Report-2021.pdf

medication is a superior option to a surgical abortion, thereby forcing women to unnecessarily undergo a more invasive, expensive and inconvenient procedure. Given the heavy reliance on medication abortion in Wyoming, in some cases the Medication Abortion Ban could result in a denial of an otherwise legal abortion. Additionally, physicians and health care providers will lose the right to continue offering necessary and evidence-based health care services to their patients. The Court should issue a TRO against the Medication Abortion Ban to prevent this infringement of rights under the Wyoming Constitution.

## LEGAL STANDARD

Plaintiffs challenge the constitutionality of the Medication Abortion Ban on multiple grounds, but for purposes of this motion, Plaintiffs have focused on their claim under article 1, section 38 of the Wyoming Constitution. Under this provision, Wyoming citizens have the right to control their own health care decisions, subject only to state regulation that is reasonable and necessary to protect public health and welfare and that does not unduly infringe upon this right.

A temporary restraining order is available upon a showing of probable success on the merits and possible irreparable injury. TRO Order at ¶ 20. "In granting temporary relief by interlocutory injunction courts of equity do not generally anticipate the ultimate determination of the questions of right involved. They merely recognize that a sufficient case has been made out to warrant the preservation of the property or rights in issue *in status quo* until a hearing upon the merits, without expressing, and indeed without having the means of forming a final opinion as to such rights." *Id.* (quoting *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶ 7, 215 P.3d 1045, 1057). The current *status quo* includes the availability of pre-viability abortion and the woman's right to choose, in consultation with her physician, a surgical or medication abortion.

## I. WITHOUT A TRO, WYOMING'S MEDICATION ABORTION BAN WILL CAUSE IRREPARABLE HARM TO PLAINTIFFS, THEIR PATIENTS, THEIR CLIENTS, AND OTHER WYOMINGITES.

As was true for Wyoming's Criminal Abortion Ban, the Medication Abortion Ban will irreparably harm each of the Plaintiffs and the Wyomingites whose interests they represent if it is permitted to go into effect on July 1, 2023. Wyomingites, including the Plaintiffs, will be denied constitutional rights they have otherwise enjoyed and which have been subject to protection by this Court pending the outcome of this litigation. *See* TRO Order at ¶ 64; *Planned Parenthood Nw. v. Members of the Med. Licensing Bd. of Indiana*, No. 53C06-2208-PL-001756, at ¶¶ oo-pp (Ind. Cir. Ct. Sept. 22, 2022) (organizations can represent the interests and irreparable harms of their clients), attached as Exhibit 9.

In its order granting a TRO on the Wyoming Criminal Abortion Ban, the Court noted that irreparable injury is "harm for which there can be no adequate remedy at law." TRO Order at ¶ 54 (citing *CBM Geosolutions, Inc.*, 2009 WL at ¶ 8, 215 P.3d at 1058). The Court went on to observe that "[n]otwithstanding the availability of eventual damages, however, it has been recognized that loss of customers, loss of good will, and threats to the viability of a business may support a claim of irreparable injury." TRO Order at ¶ 54 (citing *Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc.*, 805 F.2d 351, 356 (10th Cir. 1986)). Moreover, "the Wyoming Supreme Court has recognized that injunctive relief can be sought to obtain preventative relief. . . . In Wyoming, an impending injury is sufficient to obtain injunctive relief." TRO Order at ¶ 57 (citing *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328 (Wyo. 1986); *Reno Livestock Corporation v. Sun Oil Company (Delaware)*, 638 P.2d 147, 153 (Wyo. 1981)).

Deprivation of constitutional rights is, *per se*, irreparable injury. "The 10th Circuit has repeatedly held that the loss of constitutional rights, even for a short period of time, unquestionably

constitutes irreparable injury under the TRO analysis." TRO Order at ¶ 58 (citing *Heideman v. S. Salt Lake* City, 348 F.3d 1182, 1189–90 (10th Cir. 2003); *see also Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805 (10th Cir. 2019) ("Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury."); *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (emphasizing "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary" (quoting *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001))). This applies especially to abortion: "[T]he abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences." *Bellotti v. Baird*, 443 U.S. 622, 643 (1979).

Affidavits submitted by Plaintiffs in support of this motion show that they will suffer "possible irreparable injury without the entry of a TRO." TRO Order at ¶ 54 . Each Plaintiff here will suffer a unique harm that cannot be redressed through a "remedy at law." *CBM Geosolutions, Inc.*, 215 P.3d at 1058.

*First*, because their constitutionally-protected rights to evidence-based medical care under article 1, section 38 are in jeopardy as a result of the Wyoming Medication Abortion Ban, Plaintiffs have demonstrated that irreparable harm is established without a further showing. *See infra* Part II. As the affidavits of Ms. Dow and Ms. Johnson show, the Mediation Abortion Ban will result in the deprivation of their "constitutional right to make medical decisions throughout the entire duration of [their] pregnanc[ies]." TRO Order at ¶ 58; *see also* Ex. 3, Johnson at ¶ 11–17; Ex. 4, Dow at ¶¶ 12–17.

*Second*, Ms. Johnson, Ms. Dow and similarly situated Wyomingites will face clear irreparable harm unless a TRO is entered because the Medication Abortion Ban will strip them of the right to make their own healthcare decisions in future pregnancies. Ms. Johnson was pregnant at the time this court enjoined the Wyoming Trigger Ban, and she intends to have additional

children in the State of Wyoming, subject to personal and private family-planning decisions made by her family in consultation with her physician. Ex. 3, Johnson at ¶¶ 11–14. Likewise, Ms. Dow intends to become pregnant in Wyoming after her upcoming wedding and will seriously consider leaving the state if her healthcare decisions during pregnancy are not hers to make. Ex. 4, Dow at ¶¶ 15–16.

This Court has already found that when Ms. Johnson and Ms. Dow become pregnant, the loss of "their constitutional right to make their own healthcare decisions" would "constitute[] an impending future injury that is irreparable." TRO Order at ¶ 59. The Medication Abortion Ban would prevent Ms. Johnson, Ms. Dow, and similarly situated Wyomingites from receiving medication to terminate a pregnancy, even when that pregnancy would impose a severe burden on their physical and emotional health, their well-being, their families, their careers, their right to make health care decisions, and their finances. *See* TRO Order at ¶ 50.

For example, Ms. Johnson and Ms. Dow would both wish to terminate a pregnancy in the event that they were pregnant with a fetus that had lethal defects. Ex. 3, Johnson at ¶ 16; Ex. 4, Dow at ¶ 17. The Medication Abortion Ban would prevent the use of medication to terminate such a pregnancy, regardless of whether Ms. Johnson or Ms. Dow's physician determined that the use of medication in this instance was safer, less expensive, or otherwise preferable to a surgical abortion.

Furthermore, abortion medication is a necessary component of some surgical abortions. Ex. 6, Hinkle at ¶¶ 18–19. In such cases, the Medication Abortion Ban will either prevent a surgical abortion altogether, or will require the abortion to proceed without medically necessary medication, with the result that women will unnecessarily be at risk. *Id.* Because the Ban strips Ms. Johnson and Ms. Dow of the right to make their own healthcare decisions and receive

evidence-based medical care in connection with their future pregnancies, these Plaintiffs face impending future injury which will cause them to be irreparably harmed.

*Third*, Dr. Anthony and Dr. Hinkle are physicians and licensed OBGYNs who will risk criminal prosecution and permanent loss of their medical license if they continue to provide evidence-based medical care to their patients after the Medication Abortion Ban has gone into effect. Ex. 5, Anthony at ¶ 37; Ex. 6, Hinkle at ¶ 27. As Dr. Hinkle explains, the Ban's extremely broad language prohibiting the use of *any* medication to induce or facilitate an abortion means that even medically-indicated inductions of a non-viable fetus, using basic obstetric medication such as Pitocin and Misoprostol, could be criminal. Ex. 6, Hinkle at ¶¶ 11, 18–23.

For Dr. Anthony, prescribing abortion medications for first trimester elective abortions is a common part of the evidence-based medical care she provides. Ex. 5, Anthony at ¶ 9. In fact, medication abortions accounted for all abortion procedures that took place in Wyoming in 2021. *See* Ex. 2; Ex. 5, Anthony at ¶ 10. For those patients desiring or requiring a first trimester abortion, the safe, convenient, and less expensive option of a medication abortion will be unavailable to them under this law, unless Dr. Anthony and other providers are willing to risk their livelihood and freedom to provide it. "Loss of customers" and threats to the "viability" of Dr. Anthony and Dr. Hinkle's businesses—due to a loss of their ability to practice medicine in United States—satisfies the element of irreparable harm. *Intl. Snowmobile Mfrs. Ass'n. v Norton*, 304 F. Supp. 2d 1278, 1287 (D. Wyo. 2004); *see also* Ex. 6, Hinkle at ¶¶ 7–13; Ex. 5, Anthony at ¶ 10, 14–15, 18, 37.

*Fourth*, the Medication Abortion Ban will expose Circle of Hope and Chelsea Fund to the same organizational harms and loss of goodwill that this Court found constituted irreparable harm in connection with the Criminal Abortion Ban. *See* TRO Order at ¶ 61.

If the Medication Abortion Ban is not enjoined, at least half of the abortion care Circle Hope exists to provide will be illegal in the State of Wyoming. Ex. 7, Burkhart at ¶ 11. The Ban will also greatly increase Circle of Hope's operation costs because each surgical abortion (that might have been accomplished through the use of medication) requires Circle of Hope to unnecessarily expend resources, such as costs for additional facilities, equipment, and staff.[3] *Id.* at ¶¶ 11, 16. Furthermore, the Medication Abortion Ban is so broadly drafted it may prevent abortion providers such as Circle of Hope from using medications (such as Misoprostol) during surgical abortion procedures. *Id.* at ¶ 17. As a result, Circle of Hope will lose patients and goodwill in the community. *Id.* at ¶ 11.

Chelsea's Fund will likewise suffer irreparable harm due to the increased expenses required to accomplish the organization's mission of providing assistance to Wyoming residents who could not otherwise afford an abortion. Ex. 8, Lichtenfels ¶¶ 5, 18. Because of the shortage of surgical abortion providers in Wyoming, the Medication Abortion ban will require Chelsea's Fund clients to travel further and wait longer for abortion care that they could otherwise obtain through a convenient, safe, and less expensive prescription. *Id.* at ¶ 14. The Ban will significantly increase the resources Chelsea's Fund must expend in order to provide support to the same number of clients it currently serves due to the increased cost of each abortion. *Id.* at ¶ 18. These expenses and logistical difficulties will be exacerbated by the fact that many other nearby states have banned abortion, resulting in increased demand for and delay in obtaining appointments for abortions in the states where they are still available. *Id.* at ¶ 17.

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[3] By forcing women to obtain a more expensive procedure, the Ban also places an unnecessary financial burden on women who seek and are eligible for medical abortions in Wyoming. *See* Ex. 6, Anthony ¶¶ 30–32.

"A threat to trade or business viability" like the threats faced by Circle of Hope and Chelsea's Fund, "may constitute irreparable harm," particularly when these businesses "relied on" prior regulations in making "business decisions." *Intl. Snowmobile Mfrs. Ass'n*, 304 F. Supp. 2d at 1287. If the Ban is not enjoined, Circle of Hope and Chelsea's Fund will lose goodwill, patients, and clients, and the Medication Ban will prevent both organizations from continuing to provide healthcare-related services to pregnant women in Wyoming, which is the purpose for which both organizations exist. Ex. 7, Burkhart at ¶¶ 10–11, 15–16; Ex. 8, Lichtenfels at ¶ 20–21.

*Fifth*, Wyomingites at large will be harmed by this law. As discussed above and with respect to Plaintiffs' likelihood of prevailing on the merits, the Wyoming Medication Abortion Ban is a broader ban on abortion healthcare access than the Criminal Abortion Ban which is enjoined. The Medication Ban attacks the primary way that Wyomingites access abortion care—through medication—and with fewer exceptions than the Criminal Abortion Ban. Wyoming is a rural state and the availability of convenient and discrete healthcare options for obtaining an abortion is critical. Ex. 8, Lichtenfels at ¶¶ 11–15.

The result of this law and its narrowly drawn exceptions is to deprive Wyomingites of the ability to make healthcare decisions, and private family planning decisions, during the roughly 9 months of their pregnancies. For instance, the Medication Ban will make it significantly harder for physicians like Dr. Hinkle and Dr. Anthony to provide abortion care when medically indicated, because they, the hospital where the patient is treated, and the pharmacy providing the medication, will have to evaluate whether the patient is in significant enough "peril" to permit the use of medication to terminate the pregnancy and save their life. Ex. 6, Hinkle at ¶ 12; Ex. 3, Anthony at ¶ 15.

Even setting aside the troubling attempts to legislate contrary to standard medical care, the Medication Ban will again result in forced childbirth for Wyomingites and deprivation of the

freedom and liberties that Wyomingites have enjoyed for decades. Each of the Plaintiffs, as well as similarly-situated Wyomingites will therefore suffer immediate, irreparable harms if the Medication Ban is not enjoined. As it did before, the Court should find that Plaintiffs have shown an irreparable harm warranting a temporary restraining order.

## II. PLAINTIFFS CAN SHOW A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS OF THEIR CONSTITUTIONAL CLAIMS[4]

The Court already found that Plaintiffs have demonstrated a likelihood of success on the merits of their claim that the Criminal Abortion Ban unduly infringes on the right of Wyoming citizens to control their own health care under article 1, section 38 of the constitution. The Medication Abortion Ban further infringes on this constitutional right, while adding even more ambiguity, confusion and obstacles to delivery of evidence-based health care.

The Wyoming Constitution provides:

Const. art. 1, section 38: Right of health care access.

> (a) **Each competent adult shall have the right to make his or her own health care decisions.** The parent, guardian or legal representative of any other natural person shall have the right to make health care decisions for that person.
> ***
> (c) The legislature may determine reasonable and necessary restrictions on the rights granted under this section to protect the health and general welfare of the people or to accomplish the other purposes set forth in the Wyoming Constitution.
> (d) The state of Wyoming shall act to preserve these rights from undue governmental infringement.

In interpreting constitutional provisions, a reviewing court undertakes the same analysis that it uses to interpret statutes. *Powers v. State*, 2014 WY 15, ¶ 9, 318 P.3d 300, 304 (Wyo. 2014).

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[4] The State bears the burden to demonstrate the statute's validity. Plaintiffs have no burden to demonstrate the statute's invalidity. *See Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022).

To determine the intent of a provision, the Court should look first to the plain and ordinary meaning of the words and phrases used in the law. *Id.*

The Court undertook just such an analysis in enjoining the Criminal Abortion Ban and found that the plain meaning of "health care" includes abortion. *See* TRO Order at ¶ 39. In reaching this decision the Court relied on the common definition of health care as "the services provided, usually by medical professionals, to maintain and restore health." *Id.* at ¶ 33. The Court further found that the evidence submitted by Plaintiffs established that "abortions are utilized by medical professionals to restore and maintain the health of their patients." *Id.* at ¶ 39.

On its face, the Medication Abortion Ban plainly regulates health care. The statute refers to abortion as "medical treatment," and it directly regulates the medical profession, concerns the use of prescription medication, and references "medical testing," "medical guidelines," and "medical judgment." Wyo. Stat. § 35-6-120(b). And under Wyoming law, a physician is "practicing medicine" when he or she "[o]ffers or undertakes to prescribe, order, give or administer drugs which can only be obtained by prescription according to law." Wyo. Stat. § 33-26-102 (a)(xi)(E).

The medical community considers both surgical and medication abortion to fall within the ambit of essential health care:

> The fact is, abortion is an essential component of women's health care. The American College of Obstetricians and Gynecologists (ACOG), with over 57,000 members, maintains the highest standards of clinical practice and continuing education for the nation's women's health physicians. Abortion care is included in medical training, clinical practice, and continuing medical education.[5]

Government agencies agree. According to HHS, "[r]eproductive health care, including access to birth control and safe and legal abortion care, is an essential part of your health and well-

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[5] American College of Obstetricians and Gynecologists, *Facts Are Important: Abortion Is Healthcare*, https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare (last accessed Mar. 9, 2023).

being" and "[m]edication abortion has been approved by the FDA since 2000 as a safe and effective option."[6] The WHO has likewise commented that "comprehensive abortion care services" entail "simple and common health-care procedure[s]" that are "evidence-based" and "fundamental" to "good health."[7] And the Wyoming Department of Health, in reporting abortion statistics, refers to medication abortions as "medical, non-surgical" procedures. Exs. 1 & 2.

Because medication abortion unambiguously is health care under article 1, section 38 of the constitution, the legislature may only 1) "determine reasonable and necessary restrictions" that 2) do not result in "undue governmental infringement" of the right of Wyomingites to control their abortion-related health care. On its face, the Wyoming Medication Abortion Ban violates these constitutional limitations on the legislature's authority.

There is no conceivable basis for the State to assert that the Medication Abortion Ban is reasonable and necessary to protect the public health and welfare. To the extent abortion is itself illegal, the ban on abortion medication is entirely superfluous. And to the extent abortion is otherwise legal, the medication ban is nonsensical. There is no legitimate government interest in forcing women to undergo a surgical abortion when a medication abortion is the preferred procedure for medical or other reasons.[8]

Virtually all abortions in Wyoming are through medication. Exs. 1 & 2; Ex. 5, Anthony at ¶ 10. Banning medication abortion therefore creates the very real prospect that, because of the Medication Ban, Wyoming women will not be able to obtain abortions that are otherwise legal.

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[6] Dep't of Health and Human Servs., *Know Your Rights: Reproductive Health Care*, https://www.hhs.gov/about/news/2022/06/25/know-your-rights-reproductive-health-care.html (last accessed Mar. 9, 2023).

[7] World Health Organization, *Abortion*, https://www.who.int/health-topics/abortion#tab=tab_1 (last accessed Mar. 9, 2023)

[8] In granting a TRO on the Criminal Abortion Ban, the Court did not address the question of whether strict scrutiny applied to Plaintiffs' claims under article 1, section 38. It likewise is not necessary to address the matter here, as the Medication Abortion Ban cannot survive any level of scrutiny, and on its face violates the express terms of that constitutional provision.

Such a result could not possibly further any governmental interest, because the legislature has already declared that some abortions should be available under the Criminal Abortion Ban.

The State cannot possibly assert that the Medication Ban protects life in the form of a developing fetus. The Medication Abortion Ban does not purport to ban any abortions and therefore it does not seek to preserve any potential life. Moreover, it has no exception for lethal fetal abnormalities incompatible with life, and therefore applies to fetuses that have no potential for life.

Nor can the State plausibly claim that the statute is intended to protect women. Medication abortion is exceptionally safe. After conducting an exhaustive study of the medical evidence, the National Academy of Sciences, Engineering & Medicine in a peer-reviewed, consensus report, unequivocally found that abortions in the United States "whether by medication, aspiration, D&E or induction – are safe and effective. Serious complications are rare."[9] This is consistent with the experience of Wyoming women, for whom there have been no reported complications for medication abortions for the two years prior to adoption of the Medication Ban. Exs. 1 & 2.

Moreover, the Medication Abortion Ban explicitly does not permit medication abortions that are necessary to prevent death or serious injury to women due to mental or emotional conditions. Wyo. Stat. § 35-6-120(iii). And the statute does not include an exception for ectopic and molar pregnancies, which are potentially life-threatening to women. As Dr. Hinkle describes, abortion medication is essential to treat such complications, and any delay or denial in access to

[9] National Academy of Science, Engineering, Medicine, *The Safety and Quality of Abortion Care in the United States* at p. 10 (2018), https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states (last accessed Mau 9, 2023. The findings in this report also find that "having an abortion does not increase a woman's risk of . . . mental health disorders." *Id.* at p. 9.

medication necessary to induce an abortion could harmful or fatal to a woman. Ex. 6, Hinkle at ¶ 22–23. The Medication Ban therefore by its express terms does not protect the health of women.

The ban also undermines medical ethics, because physicians will no longer be free to use the most appropriate method of abortion for a particular patient, and the statute will force physicians to perform surgical abortions when a medication abortion is the more appropriate medical procedure. Ex. 5, Anthony at ¶ 19. In short, the Medication Ban is not related to any government interest, legitimate or otherwise and therefore is neither reasonable nor necessary to protect public health, as required by article 1, section 38.

The Medication Abortion Ban also unduly infringes on women's right to control their own health care. Where a woman has a legal right to an abortion, the Medication Ban would dictate that she must undergo a surgical abortion, even where a medication abortion is superior from a medical perspective and/or in terms of cost or convenience. And if a woman does not have the time, resources or capability of traveling for a surgical abortion, the Medication Ban could prevent a woman from obtaining a legal abortion.

Moreover, the Medication Ban will interfere with a wide variety of health care. Abortion medication is used in surgical abortions, to treat incomplete miscarriages, to induce delivery of viable fetuses, and to treat a number of pregnancy complications that are potentially harmful or even life-threatening. Ex. 3, Anthony at ¶¶ 14–15. These medications also have a number of uses unrelated to pregnancy that could be impaired by the reluctance of pharmacies to stock or dispense the medications. *Id.* at ¶ 15. And medication abortion is an essential procedure for certain women, including those in rural areas and survivors of abuse. *Id.* at ¶¶ 16, 21. Finally, the exception for "imminent peril," is so vague that physicians will not know when they are permitted to provide necessary medical care to their patients. *Id.* at ¶ 19; Ex. 6, Hinkle at ¶ 24.

The Court should find that Plaintiffs have established a likelihood of success on the merits of their claim that the Medication Abortion Ban violates article 1, section 38 of the Wyoming Constitution, because it is neither reasonable nor necessary to protect public health, and it unduly infringes on the right of Wyoming women to control their own health care.

## III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES SUPPORT ISSUANCE OF A PRELIMINARY INJUNCTION

Plaintiffs and their patients face far greater harm while Wyoming's Medication Abortion Ban is in effect than Defendants will face if the Court preserves the *status quo*. The State has no "interest in enforcing a law that is likely constitutionally infirm." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). In addition, the public has an interest in a speedy injunction to block a law that fundamentally upsets the longstanding *status quo* on which Wyoming women and their families have relied upon for at least five decades. "The purpose of a preliminary injunction during the pendency of litigation is 'to preserve the status quo until the merits of an action can be determined.'" *Brown v. Best Home Health & Hospice*, LLC, 2021 WY 83, ¶ 7, 491 P.3d 1021, 1026 (Wyo. 2021) (internal citations omitted). Here, the status quo is that Wyoming women can use medication for lawful abortions. The balance of equities and public interest thus weigh decisively in Plaintiffs' favor, further demonstrating that a preliminary injunction is appropriate.

## IV. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER WITHOUT BOND

Under Wyo. R Civ. P. 65(c) "if the district court finds no likelihood of harm to the defendant, no bond is necessary." *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶ 98, 275 P.3d 438, 466 (Wyo. 2012). The Court already found that no bond was required for the TRO entered against the Criminal Abortion Ban. TRO Order at ¶ 63.

Plaintiffs request this Court continue to use its discretion to waive the security requirement. Here, the relief sought will result in no monetary loss for Defendants and is necessary to protect the constitutional rights of Plaintiffs, their patients, and women in Wyoming.

## CONCLUSION

For the foregoing reasons, Plaintiffs have demonstrated that a temporary restraining order is appropriate pending a full adjudication on the merits of this matter. This dispute implicates serious Constitutional debate and the rights of every Wyomingite to privacy and health care are at risk. Plaintiffs respectfully request this Court enter a temporary restraining order enjoining and restraining Defendants and their officers, employees, servants, agents, appointees, or successors from administering or enforcing Wyoming's Medication Abortion Ban with respect to any abortion provided while such injunction is in effect, including in any future enforcement actions for conduct that occurred during the pendency of this injunction, or during the interim between the Medication Abortion Ban's effective date and the issuance of any injunction, and that such an injunction issue without posting of security.

WHEREFORE Plaintiffs request entry of a temporary restraining order enjoining Defendants from enforcement of the Wyoming Medication Abortion Ban pending trial in this matter.

RESPECTFULLY SUBMITTED this 10th day of May, 2023

By: _____

John H. Robinson, WSB #6 – 2828
Marci C. Bramlet, WSB #7 – 5164
ROBINSON WELCH BRAMLET LLC
172 Center Street, Suite 202
P.O. Box 3189
Jackson, Wyoming 83001
Telephone: 307.733.7703
Facsimile: 307.201.5546
john@lawrwb.com
marci@lawrwb.com

Peter S. Modlin (Cal. Bar # 151453)
*Admitted pro hac vice*
GIBSON DUNN & CRUTCHER, LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
Telephone: 415.393.8392
pmodlin@gibsondunn.com

Megan Cooney (Cal. Bar # 295174)
*Admitted pro hac vice*
GIBSON DUNN & CRUTCHER, LLP
3161 Michelson Drive,
Irvine, CA 92612-4412
Telephone: 949.451.4087
mcooney@gibsondunn.com

*Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

This is to certify that this 10th day of May 2023, a true and correct copy of the foregoing was served as follows:

| | |
|---|---|
| Jay Arthur Jerde<br>Wyoming Attorney General's Office<br>109 State Capitol<br>Cheyenne, WY 82001<br>Jay.jerde@wyo.gov<br>*Attorney for Defendants Mark Gordon, Bridget Hill* | [ ] U.S. MAIL<br>[ ] FED EX<br>[ ] FAX<br>[ ] ECF<br>[✓] E-MAIL |
| Erin E. Weisman<br>Teton County Attorney's Office<br>P.O Box 4068<br>Jackson, WY 83002<br>eweisman@tetoncountywy.gov<br>*Attorney for Defendant Matthew Carr* | [ ] U.S. MAIL<br>[ ] FED EX<br>[ ] FAX<br>[ ] ECF<br>[✓] E-MAIL |
| Lea M. Colasuonno<br>Town of Jackson<br>P.O Box 1687<br>Jackson, WY 83001<br>lcolasuonno@jacksonwy.gov | [ ] U.S. MAIL<br>[ ] FED EX<br>[ ] FAX<br>[ ] ECF<br>[✓] E-MAIL |
| Frederick J. Harrison<br>Frederick J. Harrison, P.C.<br>1813 Carey Avenue<br>Cheyenne, WY 82001<br>Fred.harrison@fjhlawoffice.com | [ ] U.S. Mail<br>[ ] Fed Ex<br>[ ] Fax<br>[ ] ECF<br>[✓] E-Mail |

John H. Robinson
Marci Crank Bramlet

# EXHIBIT 1

# Wyoming Department of Health Vital Statistics Services

## 2020 Induced Termination of Pregnancy (ITOP) Report

**W.S. § 35-6-108(c)**


**Prepared by**
**Guy Beaudoin, Deputy State Registrar**
**Corina Davis, Statistician**
**Vital Statistics Services (VSS)**

**Stefan Johansson, Interim Director**
**Dr. Alexia Harrist, State Health Officer**
**Wyoming Department of Health (048)**

**Website: https://health.wyo.gov/admin/vitalstatistics/reports**

**E-mail: wdh.vss@wyo.gov**

**Cheyenne, WY 82002**


**June 4, 2021**

In response to legislation enacted during the 2019 Wyoming legislative session, the Wyoming State Health Officer notified all Wyoming physicians of changes to Chapter 6 (Abortions) of Title 35 (Public Health and Safety); specifically W.S. 35-6-107 and W.S. 35-1-108, requiring all licensed practitioners in Wyoming to report Induced Termination Of Pregnancy (ITOP) and specific abortion procedure information beginning July 1, 2019.

The requirement directs physicians to submit an ITOP report within twenty days of any abortion procedure. In addition to the physician requirements, these changes also direct the Wyoming Department of Health Vital Statistics Services office to submit an annual report on abortions for public review.

In an effort to confirm the number of procedures reported to the agency during the 2020 calendar year, Vital Statistics Services (VSS) distributed a memorandum to each hospital and medical facility requesting the institution query its electronic health record system for any International Classification of Disease, Tenth Revision (ICD10) code related to any abortion procedure (**see Attachment 1**). As a result, two facilities confirmed their reported numbers and the other facilities confirmed they had none.

The State of Wyoming Vital Statistics Services received ninety-one ITOP reports from two reporting facilities in 2020. Both facilities are classified as a clinic or physician's office.

**Table 1: Residency and Procedures**

| Procedures Performed | 2020 Responses | 2019 Responses* |
|---|---|---|
| Resident | 67 | 26 |
| Non-Resident | 22 | 5 |
| No Answer (unknown) | 2 | 0 |
| Total Procedures | 91 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

Sixty-seven ITOP procedures were performed for Wyoming residents, with two reports missing information or the residency was unknown (**see Table 1: Residency and Procedures**).

Approximately one-half of the patients requesting the procedure were between the ages of 25-34 years (**see Table 2: Age**), and sixty-one percent of the women reported the procedure was their first (**see Table 3: Number of Procedures**).

**Table 2: Age**

| Age Range | ≤ 24 | 25-34 | 35 + | Total |
|---|---|---|---|---|
| Number of Procedures 2020 | 29 | 45 | 17 | 91 |
| Number of Procedures 2019* | 7 | 18 | 6 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

**Table 3: Number of Procedures**

| Number of Previous Procedure(s) | 2020 Procedures | 2019 Procedures * |
|---|---|---|
| 0 | 65 | 19 |
| 1 | 21 | 6 |
| 2 | 5 | 3 |
| ≥ 3 | 0 | 3 |
| Total | 91 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

Eighty-eight women received the early medical abortion procedure (a nonsurgical abortion), one underwent a surgical dilation and curettage (D&C) procedure and two reports contained no answer (**see Table 4: Method Used**).

**Table 4: Method Used**

| Method Used | 2020 Responses | 2019 Responses* |
|---|---|---|
| Surgical: Dilation and Curettage (D&C) | 1 | 0 |
| Surgical: Hysterectomy/Hysterotomy | 0 | 0 |
| Intrauterine Instillation | 0 | 0 |
| Medical Non-Surgical | 88 | 31 |
| Unknown (No Answer) | 2 | 0 |
| Total | 91 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

No complications were noted on any of the 2020 reports. The gestational age of the fetus for the majority of the procedures was less than or equal to ten weeks; one report contained no answer or the gestational age information was unknown (**see Table 5: Procedures and Gestational Age**).

**Table 5: Procedure and Gestational Age**

| Gestational Age | Procedures 2020 | Procedures 2019* |
|---|---|---|
| 6 weeks or less | 49 | 18 |
| 7-10 Weeks | 41 | 13 |
| 11 Weeks or more | 0 | 0 |
| No Answer (unknown) | 1 | 0 |
| Total | 91 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

Forty-two patients reported no previous live births, forty-eight reported one or more previous live births, and one report contained no answer (**see Table 6: Number of Previous Live Births**).

**Table 6: Number of Previous Live Births**

| Number of Previous Live Births | 2020 Procedures | 2019 Procedures* |
|---|---|---|
| 0 | 42 | 17 |
| 1 | 20 | 5 |
| 2 | 16 | 7 |
| 3 | 8 | 1 |
| ≥ 4 | 4 | 1 |
| No answer (unknown) | 1 | 0 |
| Total | 91 | 31 |

* 2019 numbers covered a 6-month period (July to December 2019)

Questions regarding this report and the procedures for ITOP reporting may be directed to the State Health Officer or Vital Statistics Services.

Guy Beaudoin
Deputy State Registrar

4 June 2021
Date

Attachment 1: Memorandum to Facilities; Verify ICD10 Code for procedures
Attachment 2: Wyoming Reporting Form dated 2019

cc: State of Wyoming, Legislative Service Office
Stefan Johansson; Interim Director of Health
Dr. Alexia Harrist; State Health Officer

gb/cd

Attachment 1: Memorandum to Facilities; Verify ICD10 Code for procedures

Wyoming Department of Health

Vital Statistics Services
2300 Capitol Ave • Cheyenne, WY 82002
Phone (307) 777-7591 • Fax (307) 777-7264
wdh.vss.wyo.gov

Michael A. Ceballos
Director

Mark Gordon
Governor

February 4, 2021

Ref: ITOP-2021-01

To: Wyoming Clinical Providers

Subject: Induced Termination of Pregnancy Reporting

References:
Wyoming Statute § 35-6-107 Forms for reporting abortions.
Wyoming Statute § 35-6-108 Compilations of abortions; matter of record; exception.

As the Department of Health draws to close the annual reporting of Induced Termination of Pregnancy (ITOP), we request each facility and institution review this past year's medical files to ensure all qualifying procedures are or have been noted, and the appropriate report filed for each qualifying procedure.

Information regarding ITOP reporting requirements may be found at:
https://health.wyo.gov/admin/vitalstatistics/physicianitop/

Some Wyoming facilities have run a medical record system query searching the ITOP ICD10 Code to ensure all noted and billable procedures with the qualifying ICD10 Code are identified. This is one option to ensure compliance.

Attached with this memorandum, you will find the ITOP Reporting Form.

If in your reconciliation you find a qualifying procedure, please complete the form and mail the completed report to the office of vital records, the mailing information may be found at the bottom of the reporting form.

Point of contact for this memorandum is the undersigned at 307-777-6042 or guy.beaudoin@wyo.gov.

Respectfully,

Guy Beaudoin
Deputy State Registrar

GB/LH

cc: Alexia Harrist, MD, PhD, State Health Officer, Pubic Health Division
Stephanie Pyle, MBA, Senior Administrator, Public Health Division

# STATE OF WYOMING
# DEPARTMENT OF HEALTH
## Report of Induced Termination of Pregnancy (ITOP)

THIS REPORT IS REQUIRED BY WYOMING STATUTE 35-6-107.

DATE RECEIVED IN STATE OFFICE

| | |
|---|---|
| 1. AGE OF PATIENT | 2. DATE OF TERMINATION *(Day, Month, Year)* |
| 3. FACILITY TYPE *(Office, Hospital, or Clinic)* | 4. RESIDENCE STATE/COUNTY |
| 5. RACE (*American Indian, Black, White, etc)* | 6. OF HISPANIC ORIGIN? *(Specify No or Yes - If yes, specify Cuban, Mexican, Puerto Rican, etc.)* ☐ NO ☐ YES Specify_____ |

7. PREVIOUS PREGNANCIES *(Complete each section)*

| LIVE BIRTHS | | OTHER TERMINATIONS | |
|---|---|---|---|
| 7a. Now Living<br>Number _____<br>None ☐ | 7b. Now Deceased<br>Number _____<br>None ☐ | 7c. Spontaneous<br>Number _____<br>None ☐ | 7d. Induced<br>*(Do not include this termination)*<br>Number _____<br>None ☐ |

| | |
|---|---|
| 8. PROCEDURE THAT TERMINATED PREGNANCY *(Check only one)*<br>☐ Suction Curettage<br>☐ Medical (Nonsurgical) Specify Medication(s)_____<br>☐ Dilation and Evacuation (D&E)<br>☐ Intra-Uterine Instillation (Saline or Prostaglandin)<br>☐ Sharp Curettage (D&C)<br>☐ Hysterotomy / Hysterectomy<br>☐ Other (Specify)_____ | 9. COMPLICATIONS OF PREGNANCY TERMINATION *(Check all that apply)*<br>☐ None<br>☐ Hemorrhage<br>☐ Infection<br>☐ Uterine Perforation<br>☐ Cervical Laceration<br>☐ Retained Products<br>☐ Other (Specify) _____ |
| 10. WEIGHT OF FETUS IN GRAMS: _____<br>10a. LENGTH OF FETUS IN CMs: _____ | 11. PHYSICIAN'S ESTIMATE OF GESTATION *(Weeks)* |

**State of Wyoming Health Officer, C/O, Vital Statistics Services, 2300 Capitol Ave., Hathaway Building, Cheyenne, WY 82002, Phone (307) 777-7264**

# EXHIBIT 2

**Wyoming Department of Health**

**Public Report**

# 2021 Induced Termination of Pregnancy (ITOP) Report

**Prepared by**

**Guy Beaudoin, Deputy State Registrar**
**Corina Davis, Statistician**
**Vital Statistics Services (VSS)**

**Stefan Johansson, Director**
**Dr. Alexia Harrist, State Health Officer**
**Wyoming Department of Health (048)**
**https://health.wyo.gov/admin/vitalstatistics/reports**
**E-mail: wdh.vss@wyo.gov**

**Cheyenne, Wyoming 82002**

**May 19, 2022**

## Specific Requirements of Statute

W.S. § 35-6-107 requires all licensed practitioners in Wyoming to report Induced Termination of Pregnancy (ITOP) and specific abortion procedure information to the State Health Officer. This statute reads:

(a) The state office of vital records services shall establish an abortion reporting form which shall be used after May 27, 1977 for the reporting of every abortion performed or prescribed in this state. The form shall include the following items in addition to the information necessary to complete the form subject to subsection (b) of this section:

(i) The age of the pregnant woman;

(ii) The type of procedure performed or prescribed;

(iii) Complications, if any;

(iv) A summary of the pregnant woman's obstetrical history regarding previous pregnancies, abortions and live births;

(v) The length and weight of the aborted fetus or embryo, when measurable or the gestational age of the aborted fetus or embryo in completed weeks at the time of abortion;

(vi) Type of facility where the abortion is performed (i.e., hospital, clinic, physician's office, or other).

(b) In addition to the requirements provided in subsection (a) of this section, the form shall not contain the name or the address of the pregnant woman or any other common identifiers including a social security number, driver's license number or any other information or identifier that would tend to disclose the identity of the pregnant woman or any other participant other than the reporting physician.

(c) The form shall be completed by the attending physician and submitted to the state health officer as defined in W.S. 9-2-103(e) within twenty (20) days after the abortion is performed. A physician who fails to submit a form under this section within one hundred ten (110) days after an abortion is performed shall be reported to the board of medicine by the state health officer. The board of medicine shall investigate the matter and may take disciplinary action under W.S. 33-26-402(a)(x).

(d) Termination of a pregnancy by natural miscarriage or as a treatment consequence of a natural miscarriage shall not be reported as an abortion pursuant to this section, provided that

the miscarriage was not induced with the intent of terminating the pregnancy. An alleged miscarriage that was induced with the intent of terminating a pregnancy shall be reported as an abortion pursuant to this section.

W.S. § 35-6-108(c) requires the Department of Health Vital Statistics Services (VSS) to report annually on summary statistics from these ITOP reports.

The statute specifically reads:

(c) Not later than June 30 of each year the office of vital records services shall issue a public report providing summary statistics for the previous calendar year compiled from all of the abortion reporting forms from that year submitted in accordance with this section for each of the items listed in W.S. 35-6-107. The report shall also include the statistics for all previous calendar years during which this subsection was in effect, adjusted to reflect any additional information from late or corrected reports. The office shall ensure that no information included in the public reports could reasonably lead to the identification of any woman upon whom an abortion was performed, induced or attempted. The report shall be transmitted to the United States centers for disease control and prevention for the national abortion surveillance report.

## Response to Specific Requirements of Statute

In the 2021 reporting year, the VSS received ninety-eight (98) ITOP reports from physicians licensed to practice in Wyoming. These reporting entities are classified as clinics or physician's office, but include both procedures performed in a brick and mortar establishment (78 procedures), and those performed via tele-health (20 procedures).

Table 1, below, shows the total number of form responses by Wyoming resident status. In procedures reported in 2021, sixty-seven (67) ITOP procedures were performed for Wyoming residents; the remaining thirty-one were for non-residents.

**Table 1:** Procedures by residency status

| Residency | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| Resident | 26 | 67 | 67 |
| Non-Resident | 5 | 22 | 31 |
| Unknown (No Answer) | 0 | 2 | 0 |
| **Total** | 31 | 91 | 98 |

For 2021, 49% of the patients requesting the procedure were between the ages of 25-34 years and 74% percent of the women reported the procedure was their first. Table 2, below, breaks down the procedures by age.

**Table 2:** Procedures by age

| Age Range | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| ≤ 24 | 7 | 29 | 33 |
| 25-34 | 18 | 45 | 48 |
| 35 + | 6 | 17 | 17 |
| **Total** | 31 | 91 | 98 |

Table 3, below, tabulates procedures by number of previous procedures reported.

**Table 3**: Number of previous procedures

| Number of Previous Procedures | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| 0 | 19 | 65 | 73 |
| 1 | 6 | 21 | 19 |
| 2 | 3 | 5 | 5 |
| ≥ 3 | 3 | 0 | 1 |
| **Total** | 31 | 91 | 98 |

All ninety-eight respondents received the early medical abortion procedure (a nonsurgical abortion), as shown in Table 4, below.

**Table 4:** Method

| Method | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| Surgical: Dilation and Curettage (D&C) | 0 | 1 | 0 |
| Surgical: Hysterectomy/ Hysterotomy | 0 | 0 | 0 |
| Intrauterine Instillation | 0 | 0 | 0 |
| Medical, Non-Surgical | 31 | 88 | 98 |
| Unknown (No Answer) | 0 | 2 | 0 |
| **Total** | 31 | 91 | 98 |

No patient complications were noted on any of the 2021 reports. The gestational age of the fetus for all procedures was less than or equal to ten weeks, as shown in Table 5, below.

**Table 5:** Gestational Age

| Gestational Age | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| 6 weeks or less | 18 | 49 | 64 |
| 7-10 weeks | 13 | 41 | 34 |
| 11 weeks or more | 0 | 0 | 0 |
| Unknown (No Answer) | 0 | 1 | 0 |
| **Total** | 31 | 91 | 98 |

Sixty-two patients reported no previous live births and thirty-six reported one or more previous live births. This is shown in Table 6, below.

**Table 6**: Number of Previous Live Births

| Number of Previous Live Births | Reporting Year | | |
|---|---|---|---|
| | 2019* | 2020 | 2021 |
| 0 | 17 | 42 | 62 |
| 1 | 5 | 20 | 16 |
| 2 | 7 | 16 | 11 |
| 3 | 1 | 8 | 6 |
| $\geq$ 4 | 1 | 4 | 3 |
| Unknown (No Answer) | 0 | 1 | 0 |
| **Total** | 31 | 91 | 98 |

* Note that 2019 numbers only covered a 6-month period (July to December 2019).

# EXHIBIT 3

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT**

**IN AND FOR TETON COUNTY, WYOMING**

---

| | | |
|---|---|---|
| DANIELLE JOHNSON;<br>KATHLEEN DOW;<br>GIOVANNINA ANTHONY, M.D.;<br>RENE R. HINKLE, M.D.;<br>CHELSEA'S FUND; and<br>CIRCLE OF HOPE HEALTHCARE<br>d/b/a Wellspring Health Access;<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING;<br>MARK GORDON, Governor of Wyoming;<br>BRIDGET HILL, Attorney General for the State of Wyoming;<br>MATTHEW CARR, Sheriff Teton County, Wyoming; and<br>MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | ) | Case No. 18732 |

---

**AFFIDAVIT OF DANIELLE JOHNSON**

---

I, Danielle Johnson, being of lawful age, first duly sworn, upon oath, depose and say:

1. I am competent to testify to the matters stated herein.

2. I am a resident of Teton County, Wyoming.

3. I am 34 years old; I have a two-year old child and a four month old child, who was delivered in November of 2022.

4. I received my Bachelor of Science in Nursing from the University of Wyoming in 2011.

5. I did my new grad internship at the Rutland Regional Medical Center in Rutland, Vermont from 2011-2012, where I then began my career as an emergency room nurse.

6. I have been an emergency room nurse for 11 years. I have worked in hospitals across the country including Rutland Regional Medical Center from 2013-2014, the Good Samaritan Hospital in Lafayette, Colorado from 2014-2015, and as a travel nurse from 2015-2017. I am now an Emergency Room Nurse for a community area hospital in Wyoming, where I have been practicing since 2017.

7. I received my training as a Sexual Assault Nurse Examiner for pediatric patients in 2018, and adult and adolescents in 2022.

8. I have participated in the treatment of a wide range of emergency patients, including trauma, appendicitis, miscarriages, the flu, COVID, victims of sexual assault, and a number of other medical complications, accidents and emergencies.

9. As a nurse working under the direction of doctors, I have always felt secure in providing medically-indicated and lifesaving care to my patients, using evidence-based medical science and proven procedures.

10. In my work as a nurse, I am obligated to assist with the administration of ethical and evidence-based healthcare to meet my patients' emergency needs, including patients who are pregnant.

11. I was pregnant at the time that HB 92 was certified by the State of Wyoming to become law. Although I have now since given birth to my child from that pregnancy, my desire is to have additional children in Wyoming. This is a private family planning decision that my husband and I will be making together. In making those personal decisions, I am relying and depending on my ability to make decisions about any future pregnancies I have, including my right

to make informed healthcare decisions in consultation with my family and my healthcare providers that are in the best interest of my personal mental and physical health and my family's wellbeing.

12. My husband and I plan to stay in Wyoming, where we intend to raise our children. Should Wyoming's Abortion Ban—called the "Life is a Human Right Act"—become effective, my loss of the right to seek appropriate healthcare for myself and my family and our ability to make personal decisions about my future pregnancies would influence whether or not my family chooses to stay in Wyoming.

13. If the Ban were to take effect, I would no longer be entitled to evidence-based health care as recommended by the American College of Obstetrics and Gynecology, the American Medical Association, and other entities that support evidence-based healthcare.

14. I would no longer be entitled to ethical and evidence-based health care as determined by my health care providers and the Ban will prohibit me from seeking and receiving such healthcare in Teton County and throughout Wyoming.

15. As an Emergency Room Nurse, I understand that for my future pregnancies the Ban will likely cause my health care providers to delay and/or deny appropriate medical or surgical treatment until I was in a life-threatening situation, a risk I and my family should not have to face when such treatment has been available to me my entire life. Under the Ban, my health care providers will have a legal obligation to do everything they can to save the fetus before providing me with evidence-based care in a situation where my life is at risk. This means I would potentially experience significantly more pain and suffering, and potential long-term harm and immediate risk of death, due to the delay in receiving evidence-based medical care.

16. If my future pregnancy reveals that I am pregnant with a fetus with lethal defects, I would not want to continue the pregnancy until labor occurs or until fetal death in-utero and I

would want to have all evidence-based healthcare options available to me, including termination. The Ban only permits me to make these choices if the lethal defects with the fetus would mean that the child would only survive for "hours" after birth, without any further indication of what that means. As an experienced nurse, I know that there are varied outcomes with any medical diagnosis. Healthcare providers may anticipate that a fetus may pass away within a certain number of hours after birth, but that fetus may also live for a few days, or even weeks, all in a great amount of pain, before passing away. If the Ban is effective, there is a risk that healthcare providers will deny me the choice, which I presently have the right to make, out of fear for violating the Ban.

17. If the Ban takes effect, it impacts my ability to stay in Wyoming, raise a family, and have children. My healthcare decisions will be constrained by the State of Wyoming, and my family's decisions about our well-being will no longer be our own.

18. If the Wyoming Abortion Ban were to go into effect, it would raise concerns about how to provide evidence-based care to pregnant patients.

19. I could be legally constrained from providing my pregnant patients with all available evidence-based health care which I am ethically and professionally obligated to provide as an Emergency Room Nurse. Such a constraint could compromise my license and my livelihood. Wyoming's Abortion Ban statute is confusing and asks medical care providers like me to make decisions with potential criminal consequences, possibly in an emergency setting, with no clear guidance about whether and when the exceptions to the law apply.

20. For instance, in the situation where a pregnant woman has experienced trauma—for example, from being in a car accident or the victim of domestic violence—a complication may arise when the woman is bleeding significantly and the fetus's heart rate is decreasing. In these situations, the woman may be actively miscarrying but the fetus still has a heartbeat, and the

evidence-based standard of medical care is termination of the pregnancy to provide necessary medical care to the pregnant person. If the Ban is effective, this care will have to be delayed until the pregnant woman has continued to hemorrhage to the point where she is significantly more likely to die imminently without medical care. Delaying this care would violate my ethical and professional duties as a Nurse.

21. I am concerned about how Wyoming's Abortion Ban will work with the Federally enacted Emergency Medical Treatment and Labor Act. (EMT ALA)

22. If the Ban were to be enacted, women in Wyoming would be at risk of not receiving critical or life-saving care if they are pregnant and may not be provided other essential care if it were to risk abortion. I worry about this issue as a potential pregnant patient and in my role as a nurse who provides emergency medical care.

23. As a nurse I am bound by professional ethics, the policies and rules of my licensing board, state law, and the Nightingale Pledge.[1] I fear that Wyoming's Abortion Ban may create situations wherein I cannot comply with all of these duties simultaneously, especially in an emergency setting.

[1] The Nightingale Pledge:
I pledge my dedication to a profession that is responsible for the lives of others. As a professional nurse, I recognize that I will be accountable to the public for my actions. I will work to safeguard the health and welfare of clients who have placed their trust in me.
I am committed to work together with my peers and to be supportive in my pursuit of excellence in nursing education. I vow to behave ethically, honestly, professionally, and with integrity in all my learning endeavors. As a student of nursing, I will promote ethical behavior and report unethical behavior.
As a future professional nurse and representative of the Fay W. Whitney School of Nursing I pledge to treat fellow students, faculty, staff, clients, and community partners with dignity and respect while taking into consideration diversity in values and beliefs.
I pledge to advocate for clients in need and to embrace the complex role of the professional nurse. I will be a living role model for others. I recognize that my responsibility for acquiring new knowledge does not end with graduation but will be a lifelong endeavor.

24. If I were to violate the Ban to provide evidence-based medical care to comply with my ethical obligations as a Nurse, I could be at risk of criminal prosecution, impacting my future, my license, and my family, now and forever.

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this 7th day of March, 2023.

Danielle Johnson

STATE OF WYOMING )
)ss.
COUNTY OF TETON )

The foregoing Affidavit was acknowledged by Danielle Johnson before me this 7th day of March, 2023.

WITNESS my hand and official seal.

DOMINIQUE LOHN
Notary Public - Wyoming
Teton County
My Commission Expires Oct 29, 2024

Notary Public

My Commission expires:
10/29/2024

# EXHIBIT 4

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT**

**IN AND FOR TETON COUNTY, WYOMING**

| | |
|---|---|
| DANIELLE JOHNSON; KATHLEEN DOW; GIOVANNINA ANTHONY, M.D.; RENE R. HINKLE, M.D.; CHELSEA'S FUND; and CIRCLE OF HOPE HEALTHCARE d/b/a Wellspring Health Access;<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; MATTHEW CARR, Sheriff Teton County, Wyoming; and MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | Case No. 18732 |

**AFFIDAVIT OF KATHLEEN DOW**

I, Kathleen Dow, being of lawful age, first duly sworn, upon oath, depose and say:

1. I am competent to testify to the matters stated herein.

2. I am a resident of Laramie, Wyoming.

3. I am 26 years old.

4. I received my dual bachelor's degree of science in psychology and criminal justice from Northeastern University in Boston, Massachusetts in 2018.

5. I am currently a third-year law student at the University of Wyoming, set to graduate in May of 2023.

6. I am a practicing Jew.

7. I have been practicing the Jewish faith my entire life. I was raised in the Jewish faith by my parents, friends, and family, and have been participating in Jewish traditions and holidays since childhood. Since moving to Wyoming, I have continued to practice my faith, driving to Colorado for the High Holidays, spending Shabbat with family every two weeks, and my fiancé and I intend to raise our children in the Jewish faith.

8. My faith believes that abortions are permissible, and in some cases required, and under Jewish Law, an abortion to save the life of the mother is permitted and even mandated. Under Jewish Law stated in the Mishnah, which forms the basis of my genuine beliefs, a pregnant woman's life and physical and emotional well-being takes precedence and this prioritization lasts until the majority of the fetus has been born and the baby takes its first breath. Only then does the fetus have a nefesh/ruach/neshama—a soul. In this way, life begins at birth under Jewish law and my faith. Up until birth, my Jewish beliefs teach that the fetus is

considered a part of the woman, and abortion is permitted where necessary to preserve physical or mental health of the woman.

9. Judaism is absolutely pro-life and sacrificing a pregnant woman, including her physical or mental wellbeing, for the sake of a fetus who may or may not ever live is the antithesis of that. The Wyoming Criminal Abortion Ban states that a fertilized egg is a person as soon as it is implanted. This is a Christian idea and not consistent with my Jewish faith.

10. As a Jewish woman, it is an essential part of my faith that I have access to abortion. Imposing this Christian standard of ethics and family planning on me directly restrains my religious freedom, which is at the core of who I am as a person. My Judaism establishes my purpose on this earth, how I live my life, and how I interact with the world around me.

11. At 19 years old, I terminated a pregnancy, which was the product of a toxic relationship with an abusive partner. I feared for my personal physical safety, mental well-being, and future. I made this decision in consultation with my healthcare provider, because I valued the safety of my life, and because I had the right to make the decision to protect myself from a potentially violent situation.

12. I am engaged to be married. My partner and I recently found a rabbi in Cheyenne, Wyoming who will marry us. My fiancé and I plan to have children, and we are hoping this rabbi will serve as our family rabbi. We would like to make

Wyoming our home and where we raise our children. I plan on staying in Wyoming as long as I have the rights that I have always had, as I plan to utilize my Wyoming Juris Doctorate to gain employment in the State. I am currently working at an internship in a law firm, and I plan on working there full-time after graduation.

13. When my fiancé and I have children, I plan to be able to make healthcare decisions in consultation with my family and my healthcare providers which are in the best interest of my personal physical and mental health and my family's health. We do not plan to have any of those decisions made by the government.

14. The Wyoming Criminal Abortion Ban impacts the rights I have always had. If the Ban takes effect, I will not be able to consider abortion, pursuant to my faith, if my physical or mental health are in danger while pregnant. Instead, I will be forced to follow a law that is based on Christian doctrines I do not believe in or follow. I believe this is forcing the Christian religion upon me.

15. In addition, if the Ban takes effect, I will no longer be entitled to evidence-based health care as recommended by my healthcare providers. When I got pregnant before the Ban, I was entitled to make choices for my own body and wellbeing. As I intend to get pregnant and have children in Wyoming, I will be unable to make these choices and receive ethical and sound healthcare from my providers if the Ban is effective. My fiancé and I are relocating to Cheyenne so that

we can be near a bordering state that may allow me to have access to appropriate care during pregnancy which I would be denied in Wyoming.

16. Additionally, if the Ban takes effect, I will be denied or delayed in being able to receive medical and surgical treatment if I experience any complications in my intended future pregnancies. This is because I will not be entitled to such care under the Ban until I am in a sufficiently severe or life-threatening situation—a risk myself and my family should not have to face when such treatment has been readily available to me for my entire life. If the Ban were to go into effect, my fiancé and I will strongly consider moving out of state out of fear for my health and safety during pregnancy.

17. If my future pregnancies reveal that I am pregnant with a fetus with lethal defects, I do not wish to continue the pregnancy until labor occurs or until fetal death, and want to have all evidence-based health care options available to me. I would wish to terminate a pregnancy where it was likely that the fetus would only live for days or weeks, but I understand that care is likely to be denied to me under the Ban.

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this 8 day of March, 2023.

Kathleen Dow

STATE OF WYOMING )
) ss.
COUNTY OF LARAMIE )

The foregoing instrument was sworn to and acknowledged before me by Kathleen Dow on this 8 day of March, 2023.

WITNESS my hand and official seal.

Notary Public
My Commission Expires:

TIM CRAWFORD - NOTARY PUBLIC
COUNTY OF ALBANY
STATE OF WYOMING
My Commission Expires 08-03-2023

# EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NINTH JUDICIAL DISTRICT OF WYOMING**

| | |
|---|---|
| RENE HINKLE, M.D.; GIOVANNINA ANTHONY, M.D.; KATHLEEN DOW; DANIELLE JOHNSON; CHELSEA'S FUND; and CIRCLE OF HOPE, d/b/a Wellspring Health Access,<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; MATTHEW CARR, Sheriff Teton County, Wyoming; and MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | Case No. 18853 |

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**AFFIDAVIT OF GIOVANNINA ANTHONY, M.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST THE WYOMING CRIMINAL MEDICATION BAN**

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I, Giovannina M. Anthony, M.D., being of lawful age, first duly sworn, upon oath, depose and say:

1. I am an Obstetrics and Gynecology specialist and I practice in Jackson, Wyoming. My duties include all forms gynecologic and obstetric care, including medication abortions.

2. The facts I state here are based on my 30 years of medical practice, my personal knowledge, information obtained through the course of my duties, and my familiarity with relevant medical literature and statistical data recognized as reliable in the medical profession.

3. I submit this affidavit in support of Plaintiff's Motion for a Temporary Restraining Order. I understand that the Wyoming Chemical Abortion Ban (SF 109) prohibits a chemical abortion—also known as a medication abortion, a medical abortion, or abortion pills—at any point in pregnancy with extremely narrow exceptions, and exposes any person who violates the law to a misdemeanor punishable by a prison sentence and fines ("Medication Abortion Ban"). I understand that any person who prescribes or administers medications that induce a medical termination of a pregnancy are subject to these penalties.

4. As a result, the Medication Abortion Ban harms Wyomingites' access to a wide range of family-planning and gynecological and obstetric services, pregnant individuals across the state, and me in my personal capacity as a physician and OBGYN.

## I. My Background

5. I'm licensed to practice medicine in Wyoming and am board-certified in obstetrics and gynecology. I serve on the Wyoming Medical Society board of trustees, representing Lincoln and Teton Counties, and I am a graduate of the Wyoming Leaders in Medicine program. I have been in full-time practice in Wyoming for 18 years.

6. I obtained my biomedical engineering degree from the University of Southern California in 1988, and my medical degree from the University of Southern California in 1992. I completed my residency in 1996 at the Harvard Medical School hospitals: Brigham and Women's Hospital and Massachusetts General Hospital, in Boston, MA. I received American Board of

Obstetrics and Gynecology certification in 2001. I have provided medication abortions in Wyoming since 2005 and have done so as a routine part of my medical practice since 1996.

7. I have delivered more than 3,000 babies so far in my career, with many of those births complicated by maternal and fetal conditions. I have seen the broad spectrum of human complications during pregnancy and childbirth and have a deep understanding of the complications that can cause durable disability and death.

8. ***Medical Services I Provide:*** I provide the full spectrum of obstetrics and gynecology services. This includes prenatal care, infertility treatment, management of high-risk pregnancies, both vaginal deliveries and cesarean sections, fetal death, miscarriage, well woman primary care, gynecologic care, including gynecologic surgery and adolescent gynecology, and a full range of family-planning services. Family planning services include preventative visits, breast exams, Pap tests, sexually transmitted disease treatment, pregnancy testing, contraceptive counseling, and provision of a wide range of FDA-approved contraception methods, including long-acting reversible contraceptives such as the intrauterine device (IUD) and progesterone implant.

9. My services also include medication abortion, available up to 11 weeks LMP. Many patients prefer medication abortion to surgical abortion because medication abortions are more discrete.[1] Even though patients are still required to come to our health center to obtain the medication and abortion counseling, they are able to take the medication at a location of their

[1] *See, e.g.*, FDA *Mifeprex (Mifepristone) Information* (updated Jan. 4, 2023), available at: https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation.

choosing, usually in the safety and privacy of their home. Given the low demand for surgical abortions, my medical office provides exclusively medication abortions to our patients.

10. In 2021, the State of Wyoming reported 98 abortions obtained by both Wyoming residents and non-residents in Wyoming.[2] Kathryn Noyes, M.D., a family practice physician with whom I partner, and I performed 86 of these abortions, all of which were medication abortions. In 2022, we provided 91 total medication abortions. Recently, medication abortion also became available via Telehealth with JustThePill.com (JustThePill is an online abortion provider that provides telehealth appointments and mails abortion pills to your home). Another small number obtain abortion services in Montana. Hence, there is already a tremendous burden on the women of Wyoming to access services, and this burden is more profound in the western half of the state, where I practice.

11. From my 30 years of experience providing a full range of sexual and reproductive health services, including abortion, I know how important abortion is to women in Wyoming. My patients' lives are complicated, and their decisions to have an abortion often involve multiple considerations. Approximately 37% of abortion patients in Wyoming already have one or more children.[3] Many already use contraception and have had a failure with their method. My patients with children understand the intense responsibility of parenting and decide to have an abortion based on what is best for them and their existing families, which may already struggle with basic unmet needs. These patients frequently conclude that they will have a harder time meeting their existing children's needs for emotional, physical, and economic support.

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[2] Wyoming Department of Health, Division of Vital Statistic Data and Reports, Induced Termination of Pregnancy (ITOP) Reports at 5, tbl. 4 (May 2022), available at https://health.wyo.gov/wp-content/uploads/2022/05/WDH-VSS-State-ITOP-Report-2021.pdf.

[3] *Id.* at 5 tbl. 6.

12. Other patients decide that they are not ready to become parents because of their age or desire to complete their education before starting a family. Some patients never wish to have children. Some patients have health complications during pregnancy and seek abortions to preserve their own health. In some cases, my patients are struggling with drug addiction and decide not to become parents during that struggle. Others have an abusive partner they view as an unsuitable parent, or a partner they do not want to be tied to for the rest of their lives. Still other families receive grave fetal diagnoses during very much wanted pregnancies, and they may determine that the care and attention required by a new child would make it impossible for them to fulfill the rest of their family's needs. In all of these cases, my patients have determined that abortion is the right decision for them. They trust me to preserve the physician-patient relationship, and to honor their decision, without interference from the State.

## II. Impact on Pregnant Patients

13. The Medication Abortion Ban will have a devastating impact on these Wyoming patients who need an abortion and/or abortion-related health care services. While there is an injunction pending for the Wyoming Criminal Abortion Ban, Wyomingites legally have continued access to healthcare services related to abortion, but they will now be deprived of access to medication abortion if the Medication Abortion Ban goes into effect. It is my understanding that the Medication Abortion Ban makes it unlawful to prescribe, dispense, or distribute ***any*** medication for the purpose of procuring or performing an abortion. Due to the importance of medications like Misoprostol in the vast majority of abortion procedures, the Medication Abortion Ban will effectively prevent access to ***nearly all forms*** of abortion care, in addition to other impacts on medical care.

14. The Ban will also impact my ability to care for many of my other patients, not just patients seeking to terminate a pregnancy. 50% of my obstetrics and gynecology practice is devoted to prenatal care and delivery. The medications used to induce a medication abortion also have a wide range of uses for gynecological care of pregnant individuals unrelated to the intentional termination of a pregnancy. Many of these medications may also be administered to induce labor of *viable* fetuses, treat postpartum hemorrhages, and ripen the cervix before procedures. Wyoming's certified obstetrics care physicians, such as myself, will be forced to delay appropriate medical care for women with desired pregnancies. In the western half of the state, flight transport for these patients is limited by abortion restrictions in Utah and Idaho. The closest medical care will be in Colorado, at least an 8-hour drive away. The Ban's exception "to preserve the woman from imminent peril" is vague and will result in increased morbidity and even mortality due to lack of understanding.

15. The medications used to induce medication abortion also have a wide range of uses for other gynecologic procedures in nonpregnant patients, including hysteroscopy, endometrial biopsy, and intrauterine device (IUD) insertion. Due to uncertainty created by the Ban, private pharmacies will likely stop stocking many of these medications due to confusion around the Ban and to limit exposure to liability for filling these prescriptions. My patients may be unable to access these medications, or at least be seriously delayed in accessing them, resulting in increased adverse outcomes, including potentially death.

16. Medication abortion procedures are low-risk procedures—complications are limited and rare, and include bleeding, pain, incomplete abortion, or need for a surgical procedure. In addition to requiring less recovery time, abortion medications increase access to abortion care for Wyomingites who would otherwise be unable to access care, particularly Wyomingites who

live in rural areas. The ability to visit a clinic, fill a prescription, and use the medication at home saves patients from unnecessary travel and the physical recovery periods associated with other forms of abortion care. Under the Medication Abortion Ban, patients will be denied access to this accessible, inexpensive, and discrete form of abortion care.

17. The exceptions to the Ban are extremely narrow. In fact, they are even more limited than the previous Criminal Abortion Ban. For instance, there are no exceptions for fetal anomalies, ectopic pregnancy, and other critical conditions. As a result, the Ban would deny women who are pregnant with a fetus with fetal anomalies—some of which are now detectable as early as 9 weeks—access to abortion care and force her to continue the pregnancy until labor occurs. Most women choose to abort pregnancies when the fetus has no chance of survival. The Ban will create even more anguish for patients and families facing these challenging, private family-planning decisions.

18. Critically, the Ban will force me and my OB/GYN colleagues to delay medical treatment and/or deny surgical treatment to pregnant women until they are in a life-threatening situation. Examples include treatment of hemorrhage in the presence of a live fetus, ectopic pregnancy, and infection with sepsis when water has broken and the fetus is not yet viable, but heartbeat is present. The Ban will lead to hesitation in situations where appropriate medical care has been criminalized. For instance, a patient hemorrhaging in the presence of a live fetus would be forced to continue bleeding due to uncertainty and until physicians and pharmacists filling prescriptions are confident that there is no liability under the Ban, resulting in high morbidity and mortality risks. In order for my patients to receive appropriate care, I will be forced to ask them to drive to Colorado. This is contrary to recommendations by the American College of Obstetrics and Gynecology, the American Medical Association, and a myriad of other entities that support

evidence-based healthcare. It also destroys any effort to provide ethical, sound care, in the best interests of the patient. It is a violation of the oath that I have taken as a physician.

19. While the Ban creates an exception for when the pregnant individual faces "imminent peril," this standard is extremely vague and unclear. The only way in which this exception is clear is that it does *not* apply to mental health concerns, even risk of self-harm or suicide. As a result, I would face liability for administering a medication abortion to a patient who is at a high risk of committing suicide because of their pregnancy. This is particularly troubling in Wyoming, the state with the highest suicide rate in the United States. Not prescribing necessary medications under those circumstances would be a violation of my duty of care and my oaths as a physician.

20. The Medication Abortion Ban will have a particularly devastating impact on patients whose mental or physical wellbeing is threatened by continuing their pregnancies. Some patients, such as those I have described above, may not satisfy the exception to the Ban to prevent "imminent peril," but they will still need an abortion. Those with rapidly worsening medical conditions who could have obtained an abortion prior to the Ban without explanation will be forced to wait for care until a physician determines that their conditions qualify as "imminent peril" to meet the Ban's narrow exceptions. Further, because not all physicians in Wyoming will be familiar with the details of the Ban, and given its criminal penalties, these doctors may hesitate or not provide critical care out of fear for the consequences to them and their employers. This is not theoretical—we are already seeing patients across the country being denied care with disastrous outcomes.

21. The Medication Abortion Ban will also cause severe harm to individuals whose pregnancies are the result of sexual assault. I will not be able to provide medication abortions to

survivors of rape who, out of shame or fear, do not feel that they can inform the physician that the pregnancy resulted from sexual assault. Medication abortions, which are more discrete and less invasive than procedural abortions, are particularly important to patients who are survivors of trauma and assault. I also could not provide medication abortions to patients who do not wish to discuss the circumstances of their pregnancy as a condition of obtaining an abortion, or who may be uncertain whether the pregnancy is a result of an assault. The Ban places the burden of proof upon the physician, at the time the abortion is requested, to be certain that assault or incest took place, referring to technical criminal codes with which I am not familiar. I am not trained to evaluate the criminality of an assault or incest and, as a result, I face great exposure under the Ban should I make an assessment in good faith to deny or provide abortion care, which ultimately ends up being incorrect. Ending the pregnancy cannot wait for the usual time required for assault and incest charges to navigate the court system. Because medication abortion is a crime under the Ban, physicians will be unwilling to treat these patients. These patients will have nowhere to turn, and, if unable to travel to Colorado, will be forced to bear the child of their rapist. The inhumanity of this situation defies logic, morality, and compassion.

22. Regardless of a patient's reasons for seeking a pre-viability abortion, my response is the same: I am committed to providing high-quality, compassionate abortion care that honors each patient's dignity and autonomy. I trust my patients to make the best decision for themselves and their families, considering the full complexity of their lives that we, as medical professionals, cannot fully know.

23. Patients with desired pregnancy deserve access to evidence-based healthcare. This may include treatments that potentially are harmful to the fetus, but urgent and medically necessary for the mother. The complexity of this type of medical decision-making is profound, and the

Medication Abortion Ban functions as a barrier to care. It is written by legislators with no experience, knowledge, or comprehension of obstetrics and gynecology, thereby creating gray areas, uncertainty, and hesitation for providers. Due to the practicalities of abortion care in Wyoming, it is clear that the Ban was written to create an ***even more restrictive*** abortion ban in practice than the one that is currently enjoined.

## III. Forced Pregnancy and Parenting

24. Pregnancy is characterized by discomfort, limited activity and mobility, and risks to health and life that have been a leading cause of death of reproductive age women. Although many of these complications can be mild and resolve without medical intervention, some require evaluation and occasionally urgent or emergency care to preserve the patients' health or to save their life. Pregnancy can also exacerbate preexisting health conditions and can lead to the development of new and serious health conditions as well. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy) are significantly more likely to do so.[4]

25. Pregnancy can also induce or exacerbate mental health conditions.[5] Those with histories of mental illness may experience a return of their illness during pregnancy.[6] These mental health risks can be higher for patients with unintended pregnancies, who may face physical and

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[4] Shayna D. Cunningham et al., *Association Between Maternal Comorbidities and Emergency Department Use Among a National Sample of Commercially Insured Pregnant Women*, 24 ACAD. EMERGENCY MED. 940 (2017), available at https://pubmed.ncbi.nlm.nih.gov/28471532/; *see also* Healthcare Cost & Utilization Proj., *Emergency Department and Inpatient Utilization and Cost for Pregnant Women: Variation by Expected Primary Payer and State of Residence*, 2019, at 30 tbl. D.1 (Dec. 14, 2021), available at https://hcup-us.ahrq.gov/reports/ataglance/HCUPanalysisHospUtilPregnancy.pdf.

[5] Kimberly Ann Yonkers et al., *Diagnosis, Pathophysiology, and Management of Mood Disorders in Pregnant and Postpartum Women*, 117 OBSTETRICS & GYNECOLOGY 961, 963 (2011); *see also* F. Carol Bruce et al., Maternal Morbidity Rates in a Managed Care Population, 111 Obstetrics & Gynecology 1089, 1092 (2008).

[6] *Id.* at 964-67.

emotional changes and risks that they did not choose to take on.[7] 31.2% of pregnancies in Wyoming are unintended, and more often are reported by women of a minority group.[8] Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness,[9] which may go undiagnosed for months or even years.

26. Some pregnant patients also face an increased risk of violence perpetrated by an intimate partner, with the severity of such violence sometimes intensifying during or after pregnancy.[10]

27. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks, far greater than those for legal pre-viability abortion. A patient's risk of death associated with pregnancy and childbirth is more than 12 times higher than the risk of death associated with legal abortion.[11] Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. Complications during labor occur at a rate of over 500 per 1,000 hospital stays, and the vast majority of childbirth delivery stays have a complicating condition.[12] A basic tenet of patient autonomy is the right to make personal

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[7] Diana Cheng et al., Unintended Pregnancy and Associated Maternal Preconception, Prenatal and Postpartum Behaviors, 79 Contraception 194, 197 (2009).
[8] Wyoming Department of Health PRAMS Data, *Unintended Pregnancy Fact Sheet Wyoming, 2012-2015* (2018), available at: https://health.wyo.gov/wp-content/uploads/2018/02/2018_Unintended-Pregnancy.pdf.
[9] *See, e.g.*, Shefaly Shorey et al., *Prevalence and Incidence of Postpartum Depression Among Healthy Mothers: A Systematic Review and Met-Analysis*, 104 J. PSYCHIATRIC RSCH. 235, 238 (2018).
[10] Am. College of Obstetricians & Gynecologists, *Comm. Op. No. 518: Intimate Partner Violence* (2022), available at: https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence.
[11] Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States*, p. 75, tbl. 2-4 (2018); *see also* Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 2016 (2012).
[12] Anne Elixhauser & Lauren M. Wier, *Statistical Br. No. 113: Complicating Conditions of Pregnancy and Childbirth, 2008*, at p. 2, tbl. 1, p. 5 tbl. 2, HEALTHCARE COST & UTILIZATION PROJ. (May 2011), available at: https://www.ncbi.nlm.nih.gov/books/NBK56037/.

medical decisions regarding one's own health. This is also guaranteed to Wyoming citizens by the Wyoming constitution. The Medication Abortion Ban violates this right.

28. The economic impact of forced pregnancy, childbirth, and parenting will also have dramatic, negative effects on Wyoming families' financial stability. Wyoming does not require employers to provide paid family leave, meaning that for many pregnant Wyoming individuals, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid.[13] Furthermore, pregnancy-related health care and childbirth are some of the most expensive hospital-based health services, especially for complicated or at-risk pregnancies. This financial burden can weigh most heavily on patients without insurance. As of 2019, 19.5% of women of childbearing age in Wyoming are uninsured.[14]

29. Women who seek, but are denied, an abortion are, when compared to those who are able to access abortion, more likely to lower their future goals[15] and less likely to be able to exit abusive relationships.[16] Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty.[17] They are also less likely to be employed full-time, more likely to be raising children

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[13] In Wyoming, employers are not required to provide employees with vacation benefits, either paid or unpaid. WY Atty Gen. Opinion No. 63-53.

[14] Maggie Clark et al., *Medicaid Expansion Narrows Maternal Health Coverage Gaps, But Racial Disparities Persist*, GEORGETOWN UNIV. HEALTH POL'Y INST., at 16 Appendix C (Sept. 2021), available at: https://ccf.georgetown.edu/2021/09/13/medicaid-expansion-narrows-maternal-health-coverage-gaps-but-racial-disparities-persist/.

[15] Ushma D. Upadhyay et al., *The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*, 15 BMC MED. 102 (2015).

[16] Sarah C.M. Roberts, et al., *Risk of Violence from the Man Involved in the Pregnancy after Receiving or Being Denied an Abortion*, 12 BMC MED. 144 (2014).

[17] Diana Greene Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 J. PEDIATRICS 183, 185-87 (2019); *see also* Diana Greene Foster, et al., *Socioeconomic Outcomes of Women Who Receive and Women Who are Denied Abortions in the United States*, 108 AJPH 407, 412 (2018) [hereinafter "Foster 2018"].

alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs than women who received an abortion.[18]

## IV. Burden of Out-of- State Travel for Abortion Services

30. Those patients who have the means to travel outside of Wyoming to obtain an abortion will still be harmed by the Medication Abortion Ban. Data has already shown that the substandard care that obstetrician-gynecologists will be forced to provide to patients with desired pregnancies will affect women across all socioeconomic groups.

31. At this time, the nearest clinics from western Wyoming providing abortion outside of the state are located in Bozeman, Montana (388 miles round trip) and Steamboat Springs, Colorado (a distance of 782 miles round trip). For patients who need an abortion beyond the first trimester (i.e., after approximately 14 weeks of pregnancy), the closest provider is located in Durango, Colorado, which is 598 miles *each way* from Jackson.[19] Patients are no longer able to travel to Idaho, which has a total ban on abortion.[20] Similarly, the closest clinics in Utah are not a viable option since the state's 72-hour waiting rule requires patients to visit the clinic and return three days later for treatment.

32. Given the logistical hurdles of traveling out of state, I expect that people able to obtain an abortion through another provider will do so later in pregnancy than they would have had they had access to care in Jackson, thus increasing their risk of experiencing pregnancy- and

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[18] *Id.* at 409, 412-13.

[19] These clinics were identified based on information from abortionfinder.org, which includes both Planned Parenthood and independent abortion providers around the country.

[20] On August 25, 2022, Idaho began enforcing its trigger ban, which prohibits abortion at all stages of pregnancy, with narrow exceptions. *See* Idaho Code § 18-622(1)(a). The state Supreme Court declined to stay enforcement of this law, *Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. Idaho*, No. 49615, 49817, 49899 (Idaho Sup. Ct. Aug. 12, 2022). In 2023, the state narrowed the exceptions to the trigger ban even further. *See* H.B. 374, 2023 Leg., Reg. Sess. (I.D. 2023), *to be codified at* Idaho Code §§ 18-604, 18-622.

abortion-related complications and prolonging the period during which they must carry a pregnancy that they have decided to end. The logistics required for out-of-state travel, including the need to obtain transportation or child care, may also force some patients to compromise the confidentiality of their decision to have an abortion. These logistical difficulties are compounded by the fact that numerous other states have banned abortion, increasing demand for appointments where they are still available.

## V. Access to Obstetric/Gynecologic Care

33. Wyoming already has a major shortage of obstetrician/gynecologists. Criminalization and further threat of criminalization of the care has already worsened this situation. Since the Criminal Abortion Ban passed in 2022, many Wyoming medical students have sought employment out of state due to the criminalization of abortion.[21] The Medication Abortion Ban will only worsen this situation. In addition to Teton County, I see patients from Sublette, Lincoln, Fremont, and Sweetwater counties for specialized care because OBGYN care simply does not exist in these rural parts of the state. The Medication Abortion Ban is causing confusion regarding legal vs. illegal care, and with the bill signed into law, this confusion is escalating. Providers are declining care to women who have desired pregnancies, out of fear that causing a pregnancy loss will lead to criminal charges.

34. I recently performed emergency gynecologic surgery on a pregnant woman who was denied care in Kemmerer, Evanston, and Rock Springs. She finally took an ambulance from

[21] Kamila Kudelska, *If Wyoming bans abortion, hospitals may have an even harder time recruiting doctors*, NPR (Feb. 27, 2023), available at: https://www.npr.org/2023/02/27/1159822864/if-wyoming-bans-abortion-hospitals-may-have-an-even-harder-time-recruiting-docto.

Kemmerer to Jackson for care. It is very difficult to recruit physicians, especially young doctors just out of OB/GYN training, to Wyoming in this current climate of fear.

35. Non-physician providers are also denying care. This includes pharmacists who will decline to fill prescriptions for pregnant women, and also withhold medications for treatment of cancer in women who are pregnant. The Ban will result in pharmacies refusing to fill prescriptions in order to evade liability. For patients who experience first-trimester pregnancy loss, hemorrhages, sepsis, or a variety of other pregnancy-related conditions, these medications are standard of care and the point in time at which the medication is administered is critical. Uncertainty as to whether or not administration of medication is legal for these patients will have life-threatening results.

36. In the absence of medication abortion in Wyoming (the form of abortion that 100% of abortion patients elected in 2021), many women, especially poor women, will be forced to remain pregnant against their will[22] or go out of state for an abortion if they can find the means to do so. Given the number of nearby states that are poised to ban abortion, for many women, this will be impossible. While these patients may have previously been able to access abortion pills online, it is unlikely that they will find any online providers who will send these medications into Wyoming, due to the broad limitations of the Ban. There is a great risk that these patients will be forced to turn to care outside of the U.S. health care system, which may in some cases be unsafe and paradoxically lead to long-term infertility, disability, or death.

[22] *Supra* n. 2. (reporting 98 abortions in 2021).

## VI. Impact on Physicians

37. I understand that the Medication Abortion Ban prohibits medical professionals from prescribing abortion medication at any point in pregnancy with extremely narrow exceptions. As a result of this Ban, myself and Dr. Noyes will be forced to stop providing medication abortions in Wyoming. If I were to continue to provide a woman with advice and care, as I am licensed to do, I would risk criminal sanctions punishable by a prison sentence and fines. As a result, I would lose my license and my ability to continue work as a medical professional. If I lose my license as a result of a criminal conviction (which the Medication Abortion Ban allows), I would be unable to practice medicine in any state in the United States, even if the medical care I provided was legal in that state.

38. For all of these reasons, if the Medication Abortion Ban is permitted to remain in effect, it will be devastating to the Wyoming patients who depend on obstetrics and gynecology services, including abortion, for care.

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this 9th day of May, 2023.

Giovannina Anthony, M.D.

STATE OF WYOMING )
)ss.
COUNTY OF ~~LARAMIE~~ TETON )

The foregoing Affidavit was acknowledged by Giovannina Anthony, M.D., before me this 9 day of May, 2023.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission expires 6/22/2025

Sabrina Jourden - Notary Public
County of Teton
State of Wyoming
Commission Expires 6/22/2025

# EXHIBIT 6

**IN THE DISTRICT COURT**

**FOR THE NINTH JUDICIAL DISTRICT OF WYOMING**

| | | |
|---|---|---|
| RENE HINKLE, M.D.;<br>GIOVANNINA ANTHONY M.D.;<br>KATHLEEN DOW;<br>DANIELLE JOHNSON;<br>CHELSEA'S FUND;<br>CIRCLE OF HOPE, d/b/a Wellspring Health Access;<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; MATTHEW CARR, Sheriff Teton County, Wyoming; and MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | ) | Case No. 18853 |

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**AFFIDAVIT OF RENE R. HINKLE, M.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST THE CRIMINAL MEDICATION BAN**

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**I, Rene R. Hinkle, MD, being of lawful age, first duly sworn, upon oath, depose and say:**

1. I am an OB/GYN specialist practicing with Cheyenne Women's Clinic, PC ("CWC"). I am one of two founding partners of CWC, which was formed in 2004. I have practiced in Cheyenne, WY, since 1999. We provide healthcare for women including full obstetric services and primary gynecology and surgery. We do not provide early-pregnancy elective-termination services but we do counsel women about their medical options.

2. The facts I state here are based on my years of medical practice, my review of CWC business records, information obtained through the course of my duties at CWC, and my familiarity with relevant medical literature and statistical data recognized as reliable in the medical profession.

## I. My Background

3. I am a board-certified obstetrician-gynecologist since 1997. I have licenses in Wyoming, Nebraska, and Montana.

4. I received my Bachelor of Arts in English from Emory University in Atlanta, GA in 1987 and I received my Doctor of Medicine from the University of Miami in Miami, FL in 1991. I completed by residency in obstetrics and gynecology at the Naval Medical Center San Diego in 1995 and then served for 3 years with the Navy at Naval Hospital in Naples, Italy.

5. I have delivered more than 3,000 babies, and more than 2,500 of them in Cheyenne WY since 1999, with many of those births complicated by maternal of fetal conditions. I have seen the broad spectrum of human complications during pregnancy and childbirth and have a deep understanding of the complications that can cause durable disability and death.

6. I submit this affidavit in support of Plaintiff's Motion for a Temporary Restraining Order. I understand that the Wyoming Chemical Abortion Ban (SF 109) prohibits a chemical abortion—also known as a medication abortion, medical abortion, or abortion pills—at any point in pregnancy with extremely narrow exceptions, and exposes any person who violates the law to a misdemeanor punishable by a prison sentence and fines ("Medication Abortion Ban"). I understand that any person who prescribes medications that induce a medical termination of a pregnancy are subject to these penalties. As a result, the Medication Abortion Ban harms (1) the CWC in its capacity as an organization that provides a range of family-planning and gynecological

and obstetric services to Wyomingites; (2) pregnant individuals across Wyoming; and (3) me in my personal capacity as a physician and OBGYN.

## II. Impact of Medical Abortion Ban on Cheyenne Women's Clinic, PC

7. CWC, PC is a group medical practice organized under the laws of the State of Wyoming.

8. CWC was founded in 2004 with the mission to provide unsurpassed care to all the women of Wyoming. We see thousands of patients annually and deliver 500-600 babies per year.

9. CWC operates one health care center in Cheyenne, Wyoming. CWC provides a full range of family-planning services including well-person preventative care visits; breast exams; Pap tests; sexually transmitted infection (STI) testing; a wide range of FDA-approved contraception methods, including highly effective, long-acting reversible contraceptives; pregnancy testing; risk assessments for pregnant women to screen for high-risk issues; full gynecological and obstetrics care; urinary tract infection treatment; cervical cancer and testicular cancer screening.

10. CWC routinely sees patients who seek advice about abortion care. Although CWC does not offer early elective abortion services, we do offer counseling to pregnant women about all the medical options available to them, including medication abortion in early stages of pregnancy. We also routinely see women who have lost viable, desired pregnancies to miscarriage and ectopic pregnancies. The Ban may negatively impact our ability to access and administer the necessary medications that we provide to these patients during lifesaving procedures. We will also not be able to offer the full range of recommended medical options for pregnant patients who have a desired pregnancy, but there is a lethal abnormality in the fetus. I will discuss these impacts in more detail in the next section.

11. The Ban will also impact the CWC's ability to care for *nearly all* its patients, not just patients seeking to terminate a pregnancy. The medications used to induce a medical abortion also have a wide range of uses for gynecological care of pregnant individuals unrelated to the intentional termination of a pregnancy. Many of these medications may also be administered to induce labor of *viable* fetuses, treat postpartum hemorrhages, and ripen the cervix before surgical procedures. The medications used to induce medication abortion also have a wide range of uses for other gynecologic procedures in nonpregnant patients, including hysteroscopy, endometrial biopsy, and intrauterine device (IUD) insertion.

12. Due to the legal risks associated with filling prescriptions for these medications under the Ban, it is likely that private pharmacies will not stock the medications that are necessary for routine gynecological care and CWC will be unable to care for our patients. In the context of debilitating health conditions like postpartum hemorrhages, there is the risk that CWC will be delayed in providing care while physicians and pharmacists determine if there is any legal risk with administering medication. The Ban's exception "to preserve the woman from imminent peril" is vague and will result in increased morbidity and even mortality due to lack of understanding.

13. At CWC we pride ourselves for delivery the safest quality medicine available anywhere in the United States. Because of the Ban we will not be able to deliver the full range of scientifically proven best practices in obstetric care.

## III. Impact of Medical Abortion Ban on Pregnant Persons

14. The Medication Abortion Ban will have a devastating impact on Wyoming patients who need an abortion and/or abortion-related health care services. While there is an injunction pending for the Wyoming Criminal Abortion Ban, Wyomingites legally have continued access to

healthcare services related to abortion, but they will now be deprived of access to medical abortion if the Medical Abortion Ban goes into effect. In fact, due to the importance of medications in the vast majority of abortion procedures—dilation and curettage ("D&C"), dilation and evacuation ("D&E"), and other procedures—the Medication Abortion Ban will effectively prevent access to ***nearly all forms*** of abortion care, in addition to other impacts on medical care.

15. It is my understanding that the Medication Abortion Ban makes it unlawful to prescribe, dispense, or distribute ***any*** medication for the purpose of procuring or performing an abortion. Prescribing and/or administering medication to abort, or evacuate, a fetus is standard treatment for a variety of conditions and purposes in the practice of obstetrics and gynecology, including medication abortion during the first trimester, preparation for procedures such as D&Cs and D&Es, medical management of miscarriage, and termination of ectopic pregnancy. I prescribe one of these medications, Misoprostol, routinely in my practice, in addition to administering and prescribing other similar medications such as Mifepristone, Pitocin, Methotrexate, and Prostin, among others.

16. **Medical abortions during the first trimester.** Mifepristone and Misoprostol are FDA-approved medications that are prescribed to be used together to evacuate a fetus during the first 10-11 weeks of gestation. The CWC does not offer elective first-trimester abortion procedures, but using these medications for this purpose is a common, safe, and effective abortion method that is used across Wyoming, the United States, and around the world. In fact, medication abortions accounted for all abortion procedures in Wyoming in 2021 and 2022. As such, the Medication Abortion Ban will essentially deny women of virtually all access to abortion services in Wyoming.

17. Medication abortion procedures are low-risk procedures—complications are limited and rare, and include bleeding, pain, incomplete abortion, or need for a surgical procedure. In addition to requiring less recovery time, abortion medications increase access to abortion care to Wyomingites who would otherwise be unable to access care, particularly Wyomingites who live in rural areas. The ability to visit a clinic, fill a prescription, and use the medication at home saves patients from unnecessary travel and the physical recovery periods associated with other forms of abortion care. Under the Medical Abortion Ban, patients will be denied access to this accessible, inexpensive, and discrete form of care, and the CWC will be prevented from advising pregnant patients that this is an available option.

18. **Later-stage abortion procedures.** Misoprostol is also administered for later-stage abortions to start the process of evacuating the fetus and preparing the cervix. To terminate later-stage pregnancies, I have administered Misoprostol to abort pregnancies at 13-14 weeks gestation and then performed a D&C to remove products of the pregnancy (e.g., the placenta). Some physicians will also administer Misoprostol to abort later-stage pregnancies at 14-18 weeks gestation before performing a D&E. Cervical preparation prior to these procedures is critical to prevent complications from forceful dilation of the cervix. Misoprostol may also reduce blood loss. The Medication Abortion Ban is so broad that many patients will be unable to have *any* procedural abortion such as these because physicians are unable to administer the necessary medications to ensure a safe procedure.

19. At CWC, we administer these medications when performing abortion procedures for patients in the case of fetal anomalies and severe non-fetal diagnoses that leave children with debilitating brain and heart conditions. We also administer medications such as Misoprostol to induce labor of a non-viable fetus (intrauterine fetal demise). Because there are no exceptions for

these conditions and situations under the Medication Abortion Ban, I will be unable to prescribe these medications in the context of performing these abortion procedures and, therefore, unlikely to perform these procedures at all.

20. **Medical management of miscarriage.** Misoprostol is an option for the medical management of early pregnancy failure, including miscarriage. I regularly prescribe Misoprostol for this purpose. Even though the Medication Abortion Ban provides an exception for "the treatment of a natural miscarriage," "*natural* miscarriage" is not medical term. As a result, physicians like me need to quickly determine whether a patient is experiencing a spontaneous abortion or whether the miscarriage is caused by "unnatural" sources—which may include self-harm, medication, or other trauma. This will result in major delays in life-saving care at a minimum, and potential denial of care at its worst.

21. Furthermore, the Ban will force pharmacies to also investigate the use of the medication before filling prescriptions in order to evade liability. Uncertainty around when physicians can prescribe medication to patients and when pharmacies should fill the prescriptions for patients in this condition will also result in the unjustified denial of care. When a patient experiences a miscarriage—whether it was spontaneous, or the result of "unnatural" events—they are at high risk for septicemia and other life-threatening conditions. With the Ban operating to delay (or even deny) these patients with the access to necessary, life-saving medical care, patients will increasingly experience avoidable outcomes such as infertility, emergency hysterectomies, and even death.

22. **Termination of ectopic pregnancy.** Unlike the previous Wyoming Abortion Ban, it is my understanding that there is no exception for the treatment of ectopic pregnancy in the Medication Abortion Ban. As a result, medications that stop the growth of a fetus developing

outside of the uterus and ultimately terminate the pregnancy may be banned under the Medication Abortion Ban. Uncertainty around whether physicians can prescribe and administer the necessary life-saving medications to terminate ectopic pregnancies may result in lifelong debilitating health conditions for patients. It is also likely that pharmacies will require additional disclosures before administering these medications due to the risks associated with filling the prescriptions and being found liable under the Ban.

23. CWC routinely sees women who have lost viable, desired pregnancies to miscarriage. Even though the Ban creates an exception for "natural miscarriage"—a term that is undefined by the Ban—the law will still negatively impact women who are suffering from miscarriage by causing delay and uncertainty in their treatment. These patients may stay home longer, bleed more and have increased morbidity and even mortality due to lack of understanding that these are not elective abortions.

24. **Termination of pregnancy for patients in "imminent peril."** CWC also regularly administers care to patients who are at risk for mental health conditions and other serious physical conditions as a result of pregnancy. While the Ban creates an exception for when the pregnant individual faces "imminent peril," this standard is extremely vague and unclear. The only way in which this exception is clear is that it does *not* apply to mental health concerns, even risk of self-harm or suicide. As a result, I would face liability for prescribing these medications to a patient who is at a high risk of committing suicide because of their pregnancy. This is particularly troubling in Wyoming, the state with the highest suicide rate in the United States. Not prescribing necessary medications under those circumstances would be a violation of my duty of care and my oaths as a physician.

25. In short, the Ban will have a devastating impact on Wyoming patients who need an abortion and/or abortion related health care services. I expect that many of these Wyoming patients will be forced to attempt to travel to other states to buy and use medications that induce a termination of their pregnancies. I am extremely concerned for patients who will travel to other states to buy abortion pills and use them without guidance or counsel from medical professionals. Meanwhile, pregnant patients who are not able to travel to other states to access care will be compelled to carry pregnancies to term against their wishes or seek other ways to end their pregnancies without medical supervision, some of which may, and likely will, be unsafe, risking damage to their health and lives.

26. I am gravely concerned about the effect that the Medication Abortion Ban will have on Wyoming patients' emotional, physical, and financial wellbeing and the wellbeing of their families, including their existing children. As the Criminal Abortion Ban created serious issues for my patients as a result of forced pregnancy and parenting, this Medication Abortion Ban will have a similar result.

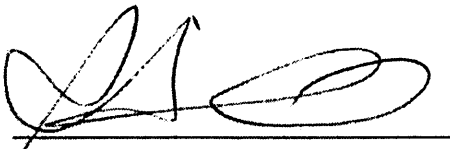
## IV. Impact of Medication Abortion Ban on Medical Professionals

27. I understand that the Medication Abortion Ban prohibits medical professionals from prescribing abortion medication at any point in pregnancy with extremely narrow exceptions. If I were to continue to provide a woman with advice and care, as I am licensed to do, I risk criminal sanctions punishable by a prison sentence and fines. As a result, I would lose my license and my ability to continue work as a medical professional. If I lose my license as a result of a criminal conviction (which the Medication Abortion Ban allows), I would be unable to practice medicine in any state in the United States, even if the medical care I provided was legal in that state.

28. For all of these reasons, if the Wyoming Abortion Ban is permitted to remain in effect, it will be devastating to the Wyoming patients who depend on abortion providers for care.

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this 9th day of May, 2023.



Rene R. Hinkle, M.D.

STATE OF WYOMING )
)ss.
COUNTY OF LARAMIE )

BARBETTE DIJOHN
NOTARY PUBLIC
STATE OF WYOMING
COMMISSION ID: 156037
MY COMMISSION EXPIRES:12/20/2027

The foregoing Affidavit was acknowledged by Rene R. Hinkle before me this 9 day of May, 2023.

WITNESS my hand and official seal.

BARBETTE DIJOHN
NOTARY PUBLIC
STATE OF WYOMING
(SEAL) COMMISSION ID: 156037
MY COMMISSION EXPIRES:12/20/2027

My Commission expires:

Barbette DiJohn
Notary Public

# EXHIBIT 7

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT**

**IN AND FOR TETON COUNTY, WYOMING**

| | | |
|---|---|---|
| DANIELLE JOHNSON; KATHLEEN DOW; GIOVANNINA ANTHONY, M.D.; RENE R. HINKLE, M.D.; CHELSEA'S FUND; and CIRCLE OF HOPE HEALTHCARE d/b/a Wellspring Health Access;<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; MATTHEW CARR, Sheriff Teton County, Wyoming; and MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | ) | Case No. 18853 |

**DECLARATION OF JULIE BURKHART**

**I, Julie Burkhart, being of lawful age, do hereby swear and state as follows:**

1. I am the founder and president of the Wellspring Health Access Health Care Services, Inc. ("Wellspring"), which is legally registered as Circle of Hope Health Care Services, Inc. ("Circle of Hope"). The following facts are based on my personal knowledge and if called and sworn as a witness to testify thereto, I would competently do so.

2. I am also the co-owner of Hope Clinic in Granite City, Ill.

3. I am also the founder of Trust Women and served as CEO for twelve years.

4. I hold a Bachelor's degree from Seattle Pacific University and a Master's degree from Wichita State University, both in political science with an emphasis on African Studies.

5. In the 1990's, I worked at the Wichita Women's Center and Aradia Women's Health Center.

6. I managed a number of political campaigns in Washington State and worked for the Washington State Democratic Party and the Washington Senate Democratic Campaign Committee.

7. I worked alongside Dr. George Tiller for eight years, as his spokesperson for between 2002 and 2006. Additionally, between 2002 and 2009 I directed ProKanDo, one of the largest political action committees in Kansas, which Dr. Tiller founded.

8. In May of 2021, I founded Wellspring Health Access, a nonprofit organization whose mission is to expand access to reproductive health care, in abortion deserts, so that people can maintain bodily autonomy.

9. Through Circle of Hope, the organization does business under Wellspring Health Access to provide healthcare services in Wyoming.

10. Wellspring intends to serve 1,100 patients per year by offering abortion care (surgical and medication), family-planning services, gender-affirming care, and gynecological care. We estimate that roughly 650 of our patients will seek abortions, and at least 50% (325) of them would seek, or be eligible for, medication abortions. As of April 20, 2023, our clinic in Casper is open and we are accepting patients and making appointments.

11. The Wyoming Medication Abortion Ban will have serious and harmful effects on Wellspring's patients and our ability to provide essential and promised medical care to the community we serve. As a result of the Medication Abortion Ban, at least half of the abortion care

we exist to provide—medication abortion—will be illegal. We will be unable to serve our patients and fulfill our mission to provide abortion care to Wyomingites, especially in areas currently underserved by abortion providers. As a result, we will lose goodwill in the community—and ultimately, our patients.

12. Patients choose medication abortions for many reasons. Medication abortions are more convenient, less invasive, and often less expensive than procedural abortions. Patients with particular mental-health challenges often seek medication abortions—the invasiveness of procedural abortions can be problematic, for instance, for patients who have previously experienced sexual violence or other trauma. And because medication, which can often be taken at home, is more discrete than a visit (or multiple visits) to a clinic, medication abortions are often safer for patients in relationships with, or living with, abusive partners or who are otherwise experiencing abuse or domestic violence.

13. As did the Wyoming Criminal Abortion Ban, the Medication Abortion Ban will make it increasingly difficult to provide and coordinate abortion services for individuals in Wyoming and the surrounding areas. Patients are often confused as to the legality of the services available to them, and Wellspring will be forced to spend a significant amount of goodwill through marketing, outreach, and other efforts to provide a potential avenue to those individuals seeking such services.

14. Even regardless of increased outreach, the Medication Abortion Ban will result in a loss of clientele for Wellspring. Because, as stated above, Wellspring intends to provide 650 per year, of which approximately 50% would be medication abortions, the Medication Abortion Ban could cause Wellspring to lose approximately 325 clients each year.

15. As did the Wyoming Criminal Abortion Ban, the Medication Abortion Ban exposes Wellspring's providers to serious legal risk, including criminal and professional liability. This legal risk threatens Wellspring's existence because it powerfully deters physicians and nurses from providing care to Wellspring's clients—in fact, it deters physicians and nurses from continuing to work, or being hired to work, for Wellspring at all.

16. Although the risks of abortion care, including procedural abortion, are low, all medical procedures carry some risk. Forcing patients who would otherwise have been eligible for medication abortion to receive procedural abortion instead will increase the medical risk to those patients because it will require them to undergo a more invasive treatment instead of a less invasive one. It will also increase Wellspring's operating costs, because each procedural abortion that might otherwise have been a medication abortion requires additional facilities, equipment, and staff.

17. The breadth of the Medication Abortion Ban may even sweep up drugs used in procedural abortions. For instance, Misoprostol can be used in a purely medication abortion, but it may also be used during surgical abortions (typically after 14 weeks). For this reason the Medication Abortion Ban will limit access to, or even prevent entirely, non-medication abortions. Medication is also often used to induce delivery of a nonviable fetus, which under the Medication Abortion Ban might qualify as a medicated abortion because often there is no surgical component.

I declare under penalty of perjury under the laws of the United States and Wyoming, that the foregoing is true and correct.

Dated this 7 day of May, 2023 and executed in Wichita, KS

**Julie Burkhart**

# EXHIBIT 8

**IN THE DISTRICT COURT**

**FOR THE NINTH JUDICIAL DISTRICT OF WYOMING**

| | | |
|---|---|---|
| RENE HINKLE, M.D.;<br>GIOVANNINA ANTHONY M.D.;<br>KATHLEEN DOW;<br>DANIELLE JOHNSON;<br>CHELSEA'S FUND;<br>CIRCLE OF HOPE, d/b/a Wellspring Health Access;<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF WYOMING;<br>MARK GORDON, Governor of Wyoming;<br>BRIDGET HILL, Attorney General for the State of Wyoming;<br>MATTHEW CARR, Sheriff Teton County, Wyoming; and<br>MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,<br><br>Defendants. | ) | Case No. 18853 |

**AFFIDAVIT OF CHRISTINE LICHTENFELS IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST THE WYOMING CRIMINAL MEDICATION BAN**

**I, Christine Lichtenfels, being of lawful age, do hereby swear and state as follows:**

1. I am a Board member, the Treasurer, and the longest serving volunteer for Chelsea's Fund, an abortion fund serving Wyoming and eastern Idaho residents seeking abortion services.

2. Chelsea's Fund has been all-volunteer since its inception in 1998.

3. Chelsea's Fund was founded in 1998 as a Wyoming nonprofit corporation by Lander, Wyoming, resident Chelsea Kesselheim, who believed that the right to abortion (which was guaranteed at that time and since) was not a right if people could not access it. Chelsea made it her mission to help people access the vital right to abortion by providing funding to pay for clinic fees that a person could not otherwise afford, and by providing travel support as needed.

4. Today, Chelsea's Fund's mission is to enable all Wyoming and eastern Idaho residents to access abortion services, through information, funding assistance, and other logistical support necessary to facilitate travel, lodging, and childcare. Chelsea's Fund strives to ensure that people have the opportunity to make the decision whether to terminate a pregnancy themselves, which is only possible when they have adequate funds to pay for the abortion services.

5. Chelsea's Fund provides assistance to those Wyoming residents who could not otherwise afford an abortion. Providers will refer patients to us when their patients express an inability to pay for the abortion. Other people who need assistance reach out to Chelsea's Fund because they heard of us through our website, social media, friends, and other sources. The population with which Chelsea's Fund works is a segment of all the Wyoming residents who access abortion services. It is the segment with the least financial resources, which national statistics show is the largest segment of the population getting abortions.[1]

6. Chelsea's Fund works directly with providers by providing vouchers for payment in an amount determined in conversation with the patient. Sometimes patients do not show up for their abortion appointments. Often this is because events, including transportation problems

[1] Guttmacher Institute, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* (May 2016), https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014 (last accessed May 4, 2023).

like a broken-down car or the sudden unavailability of a ride, prevented their attendance. We know this because our callers contact us about changed appointment dates.

7. I became involved with Chelsea's Fund (its name was Women for Women at that time) in 2013, soon after Chelsea Kesselheim passed away. I had been previously involved in advocating for women's rights to bodily autonomy as a board member, Treasurer, and President of NARAL Pro-Choice Wyoming during 2005-2012, excepting a few years.

8. Under my leadership, Chelsea's Fund became a 501(c)(3) organization. Additionally, we created a website with information about availability of abortion services for Wyoming and eastern Idaho residents, and updated our organizational systems to facilitate communication with clinics and others. In addition to our website, we have used social media to spread word of our services with the goal that no one should be unable to access abortion services because she could not afford them.

9. Chelsea's Fund maintains a website (www.chelseasfund.org) that provides information about where a Wyoming resident might access abortion services and how to request assistance. In order to receive funding, a person calls or texts the Chelsea's Fund phoneline. A designated volunteer is responsible for responding to all inquiries, providing information, determining the appropriate funding, and contacting the relevant clinic. The volunteer will either answer the phone immediately or, if unable to do so, will return a call as soon as possible to the caller, whom we call a "client." Currently, we have six trained volunteers who rotate primary responsibility for answering the phone and assisting clients. I am one of those volunteers; most of the others are registered nurses or nurse practitioners.

10. Clients seeking abortion in Wyoming face significant hurdles, and the Medication Abortion Ban will only raise them. One of the most significant hurdles is out-of-state travel, which

requires reliable personal transportation, money for food and lodging, time off of work, childcare, open roads, and other resources.

11. Medication abortion is typically available early in a pregnancy, and then at some point it becomes unavailable (usually around 10-11 weeks after the patient's last menstrual period). Despite this time limitation, the vast majority of Wyoming abortions are medication abortions. Based on Wyoming's Vital Statistics Reporting, from 2019 through 2021, all but one of the 220 abortions provided in Wyoming were medication (not surgical) abortions.[2] Every reported abortion, except for one, occurred at 10 weeks gestation or earlier.[3]

12. This is due in large part to Wyoming's general support of telehealth. For instance, the University of Wyoming operates a Wyoming Telehealth Network (https://wyomingtelehealth.org/), which supports healthcare entities, providers, and specialists to increase access to care and improve health outcomes for Wyomingites. Wyoming statutes also reflect the state's support for telehealth. For example, W.S. § 9-2-117 created the Office of Rural Health and outlines its duties. Telehealth is especially important for rural areas, and much of Wyoming is rural. Telemedicine and telehealth capabilities comprise a significant part of the duties of the rural health office.

13. Tele-abortion services significantly improve the accessibility of abortion for Wyoming residents because they allow physicians to prescribe abortion medication over the phone, so patients do not need to travel (or even leave their homes). Telehealth abortion, using the medications prohibited by the Medication Abortion Ban, is typically easier, faster, more convenient, and less expensive than any other means of providing abortion care.

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[2] Wyoming Department of Health, *2021 Induced Termination of Pregnancy (ITOP) Report* (May 19, 2022), at Tables 1, 4, https://health.wyo.gov/wp-content/uploads/2022/05/WDH-VSS-State-ITOP-Report-2021.pdf (last accessed May 4, 2023).

[3] *Id.* at Table 5 (one abortion reported as "unknown" gestation).

14. The Medication Abortion Ban will effectively outlaw abortion, including in ways that the Criminal Abortion Ban does not, because the absence of any surgical abortion providers in Wyoming until very recently and the prevalence of medication abortion in Wyoming. (Notably, that provider was the victim of arson and could not open for months.) The Medication Abortion Ban will result in the denial of access to the abortion care our clients need and force them to undergo more-invasive surgical abortions or travel out of state in order to receive healthcare they could otherwise obtain through a convenient and safe prescription.

15. The Medication Abortion Ban will impose an even stricter ban on abortion access than did the Criminal Abortion Ban because there are fewer exceptions to the Medication Abortion Ban than the Criminal Abortion Ban. Unlike the Criminal Abortion Ban, there are no exceptions under the Medication Abortion Ban (even vague or unclear ones) for lethal fetal abnormalities or ectopic pregnancies. The result of this is that our clients will be forced to have a surgical abortion procedure or travel out of state in order to exercise their right to medical care under these circumstances.

16. The Medication Abortion Ban will also harm patients experiencing mental-health challenges. The Ban specifically excludes patients whose pregnancies have led them to consider suicide or self-harm and whose lives, therefore, might be saved if abortion were available. This provision would be dangerous anywhere, but it is especially frightening in Wyoming, which leads the nation in suicide deaths per capita.[4]

[4] Wyoming Department of Health, *2021 Suicide in Wyoming*, https://health.wyo.gov/wp-content/uploads/2022/02/2021-OFFICIAL-Suicide-Infographic-1.pdf (last accessed May 4, 2023). Wyoming ranks 1st in suicide deaths per capita. Wyoming's suicide rate is twice the national average, and suicide is the second leading cause of death for Wyomingites aged 10 to 44 (a range composed largely of childbearing years for women).

17. Although there is now one provider of surgical abortions in Wyoming, scheduling issues will likely force many of our Wyoming clients to travel out of state for abortion care if the Medication Abortion Ban is allowed to take effect. Those who are forced to travel out of state for abortion care because of the Medication Abortion Ban will inevitably obtain their abortions later in pregnancy than they would have if they had access to care in Wyoming. The Ban will thus prolong the period during which they must carry a pregnancy that they have decided to end, potentially increasing the time they are forced to suffer debilitating morning sickness or other pregnancy-related symptoms and increasing the impact of the State's arbitrary limitations on availability of well-studied, safe health care. The logistics required for out-of-state travel, including the need to obtain transportation or childcare, may also force some patients to compromise the confidentiality of their decision to have an abortion. These logistical difficulties are compounded by the fact that many other nearby states have banned abortion, resulting in an increased demand for it and an associated delay of appointments where they are still available.

18. The Ban will also create significant organizational and financial burdens for Chelsea's Fund, as the number of individuals requiring to travel for in-person care (whether for the purpose of obtaining medication out of state or a surgical abortion in Wyoming) would increase significantly. Chelsea's Fund has been able to provide resources and abortion-access support for a broad group of clients because of the availability of medication abortion and telehealth. However, as a result of the Medication Abortion Ban, Chelsea's Fund will need considerably more funding, and logistics and administrative support, in order to provide support for the same scope of clients due to the increased cost of each abortion (e.g., increased travel and lodging costs, the cost of surgical procedures that are more expansive than medication, and later-term procedures).

19. The Medication Abortion Ban is a particular threat to the long-term existence and health of Chelsea's Fund. As did the Criminal Abortion Ban, the Medication Abortion Ban will significantly burden Chelsea's Fund's financial and organizational capacity. Chelsea's Fund is a small organization, and the Medication Abortion Ban will significantly increase the expense and difficulty of procuring out-of-state travel for Chelsea's Fund Clients.

20. The Medication Abortion Ban will have significant and immediate impacts on Chelsea's Fund's clients, who Chelsea's Fund was created to serve and represent. Being unable to access abortion services when an abortion is desired has been shown to result in worse financial and health outcomes for the woman and her family.[5] The Medication Abortion Ban will worsen all of these outcomes by delaying (or making impossible) abortion for Wyomingites.

21. For all of these reasons, if the Medication Abortion Ban is permitted to remain in effect, it will be devastating to our Wyoming clients, whose interests we represent, and it will overwhelm Chelsea's Fund's organizational structure and capacity.

FURTHER, AFFIANT SAYETH NAUGHT.

Dated this 5th day of May, 2023.

I certify under penalty of false swearing that the foregoing is true.

Christine Lichtenfels

[5] Turnaway Study, Summary available at: Advancing New Standards in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study,* https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf (last accessed May 4, 2023).

STATE OF WYOMING )
)ss.
COUNTY OF LARAMIE )

5th The foregoing Affidavit was acknowledged by Christine Lichtenfels before me this day of May, 2023.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission expires

TIANNA PEEVEY - NOTARY PUBLIC
COUNTY OF FREMONT
STATE OF WYOMING
My Commission Expires 10/5/2023

# EXHIBIT 9

**IN THE CIRCUIT COURT OF MONROE COUNTY**
**STATE OF INDIANA**

| | | |
|---|---|---|
| PLANNED PARENTHOOD NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY, INC., et. al. Plaintiffs, | ) | **CAUSE NO. 53C06-2208-PL-001756** |
| Vs. | ) | |
| MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, et. al. Defendants. | ) | |

## ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' Motion for Preliminary Injunction to enjoin the Defendants from enforcing Senate Bill 1 as enacted in various sections of the Indiana Code. Plaintiffs appear by Counsel Kenneth Falk, Stevie Pactor, and Gavin Rose. Defendants appears by Solicitor General Thomas Fisher, and by Deputy Attorneys General Melinda Holmes and Julia Payne.

### Procedural History

On August 5, 2022, after a brief special legislative session, the Indiana General Assembly passed Senate Bill 1 ("S.B. 1"). S.B. 1 criminalizes abortion in Indiana, subject to limited exceptions involving rape, incest, or a serious risk of substantial and irreversible physical impairment of a major bodily function or death of the expectant mother. S.B. 1 also requires that abortions be performed at hospitals or ambulatory surgery centers that are majority-owned by a hospital, and disallows the procedure to be performed at licensed abortion clinics where the huge majority of abortions were performed prior to S.B. 1's enactment. On August 31, 2022 Plaintiffs filed their Complaint for Injunction and Declaratory Relief along with their Motion for Preliminary Injunction. On September 12, 2022 Plaintiffs filed their Motion for Temporary Restraining Order. The Court declined to issue a Temporary Restraining Order pending hearing on the Motion for Preliminary Injunction.

With the benefit of additional time to consider the requested injunctive relief, and having considered the record of evidence, the text of the relevant provisions of the Indiana Constitution, the relevant case law, and the thoughtfully presented arguments and submissions of Counsel for all Parties, the Court concludes that injunctive relief is warranted. Accordingly, the Court GRANTS the Plaintiffs' Motion for Preliminary Injunction and prohibits the Defendants'

enforcement of S.B. 1, pending a decision on the merits in this matter. In support of this determination, the Court FINDS and CONCLUDES as follows:

## I. FINDINGS OF FACT

Parties & Background

a. Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky, Inc. (hereinafter "PPGNHAIK") is a not-for-profit corporation incorporated in the State of Washington. Declaration of Rebecca Gibron filed in support of Plaintiffs' Motion for Preliminary Injunction (hereafter "Gibron Decl.") ¶ 3.

b. PPGNHAIK is the largest provider of reproductive health services in Indiana, operating 11 health centers throughout the state. Gibron Decl. ¶ 7. PPGNHAIK provides healthcare and educational services. Gibron Decl. ¶ 8. In Indiana, PPGNHAIK also offers medication abortion up to 10 weeks after the pregnant patient's last menstrual period ("LMP") at its Lafayette health center, and medication abortion up to 10 weeks LMP and procedural abortion up to 13 weeks 6 days LMP at its Bloomington, Merrillville, and Georgetown Road health centers. Gibron Decl. ¶ 9.

c. Women's Med Group Professional Corporation (hereinafter "Women's Med") is a for-profit organization incorporated in Ohio. Declaration of William Mudd Martin Haskell, M.D. filed in support of Plaintiffs' Motion for Preliminary Injunction (hereinafter "Haskell Decl.") ¶ 1.

d. Women's Med operates a licensed abortion clinic in Indianapolis that provides both procedural abortions until 13 weeks 6 days LMP and medication abortions until 10 weeks LMP. Haskell Decl. ¶ 5. Women's Med also provides contraceptive services. *Id.*

e. Whole Woman's Health Alliance (hereinafter "WWHA") is a not-for-profit organization incorporated in Texas. Declaration of Amy Hagstrom Miller filed in support of Plaintiffs' Motion for Preliminary Injunction (hereinafter "Hagstrom Miller Decl.") ¶ 1.

f. WWHA operates a licensed abortion clinic in South Bend, which provides medication abortions until 10 weeks LMP as well as contraceptive services. Hagstrom Miller Decl. ¶ 5.

g. Dr. Amy Caldwell is an OB/GYN physician licensed to practice medicine in Indiana. Declaration of Dr. Amy Caldwell filed in support of Plaintiffs' Motion

for Preliminary Injunction (hereinafter "Caldwell Decl.") ¶ 1. She provides abortion care at IU Health and the Georgetown Road Health Center operated by PPGNHAIK. *Id.*

h. All-Options is a not-for-profit organization incorporated in Oregon. Declaration of Parker Dockray filed in support of Plaintiffs' Motion for Preliminary Injunction (hereinafter "Dockray Decl.") ¶ 1. All-Options provides support concerning pregnancy, parenting, adoption, and abortion. *Id.*

i. More specifically, All-Options operates a Pregnancy Resource Center in Bloomington that offers peer counseling, referrals to social service providers, and resources such as free diapers, wipes, menstrual products, and contraceptives. The Pregnancy Resource Center also operates the Hoosier Abortion Fund, which provides financial assistance to help pay for abortions for Indiana residents who would otherwise be unable to afford the procedure. Dockray Decl. ¶¶ 1, 4.

j. In their official capacities, Members of the Medical Licensing Board of Indiana have the authority to regulate the practice of medicine in Indiana pursuant to I.C. § 25-22.5-2-7. This includes the revocation of the medical licenses of physicians who perform abortions outside of the limitations imposed in S.B. 1.

k. Pursuant to I.C. § 33-9-1-5, the Hendricks County Prosecutor, Lake County Prosecutor, Marion County Prosecutor, Monroe County Prosecutor, St. Joseph County Prosecutor, Tippecanoe County Prosecutor, and Warrick County Prosecutor (referred to collectively herein as "Prosecutor Defendants") all have a statutory duty to conduct the prosecution of felonies and misdemeanors within their respective jurisdictions, including the prosecution of medical providers who perform abortions outside the limitations imposed by S.B. 1.

Abortion Regulation in Indiana Immediately Prior to the Passage of S.B. 1

l. Until enactment of S.B. 1, abortion was legal in Indiana until the earlier of viability or 22 weeks LMP. Ind. Code § 16-34-2-1(a)(2)(2021).

m. In a normally progressing pregnancy, viability typically will not occur before approximately 24 weeks LMP. Caldwell Decl. Ex. H. Prior to enactment of S.B. 1, abortions were permitted at licensed abortion clinics, hospitals, and ambulatory outpatient surgical centers ("ASCs"), including those majority-owned by a licensed hospital, *see, e.g.*, Ind. Code §§ 16-18-2-1.5(2021), 16-21-2-1(2021).

n. Although allowed in multiple settings prior to the enactment of S.B. 1, the vast majority of abortions occur in licensed abortion clinics.[1]

o. Procedural abortions (also known as surgical abortions) and medication abortions are common. See Caldwell Decl. Ex. B; Caldwell Decl. Ex. C at 10. Complications from abortion are rare, and when they do occur, can usually be managed in an outpatient setting. Caldwell Decl. Ex. C at 77; Caldwell Decl. Ex. J; Caldwell Decl. ¶ 17.

Impact of S.B. 1 on Abortion Services in Indiana

p. In June 2022, the United States Supreme Court held that the federal constitution did not confer a right to abortion, reversed *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and "returned to the people" of Indiana and "their elected representatives" the "authority to regulate abortion." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. at 2279. Shortly thereafter, in August 2022, the Indiana General Assembly enacted S.B. 1, which makes performing an abortion a criminal act unless one of the following three statutory exceptions apply. Ind. Code § 16-34-2-1(a) (as amended by S.B. 1, Sec. 21):

i. Indiana Code § 16-34-2-1(a)(1) permits abortions "before the earlier of viability of the fetus or twenty (20) weeks postfertilization age of the fetus" where (i) "reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life" or (ii) "the fetus is diagnosed with a lethal fetal anomaly." A "serious health risk" is one "that has complicated the mother's medical condition and necessitates an abortion to prevent death or a serious risk of substantial and irreversible physical impairment of a major bodily function," but "does not include psychological or emotional conditions." Ind. Code § 16-18-2-327.9.

[1] See Indiana Dep't of Health, 2021 Terminated Pregnancy Report (June 30, 2022) at 17, https://www.in.gov/health/vital-records/files/2021-ITOP-Report.pdf (hereinafter "2021 Terminated Pregnancy Report"); Indiana Dep't of Health, 2020 Terminated Pregnancy Report (June 30, 2021) at 18, https://www.in.gov/health/vital-records/files/ANNUAL-TPR-CY2020.pdf; Indiana State Dep't of Health, 2019 Terminated Pregnancy Report (June 30, 2020) at 16, https://www.in.gov/health/vital-records/files/2019-Indiana-Terminated-Pregnancy-Report.pdf; Indiana State Dep't of Health, 2018 Terminated Pregnancy Report (June 30, 2019) at 17, https://www.in.gov/health/vital-records/files/2018-Indiana-Terminated-Pregnancy-Report.pdf; Indiana State Dep't of Health, 2017 Terminated Pregnancy Report (June 30, 2018) at Exec. Summ., https://www.in.gov/health/vital-records/files/2017-Indiana-Terminated-Pregnancy-Report.pdf; Indiana State Dep't of Health, 2016 Terminated Pregnancy Report (June 30, 2017) at Executive Summ., https://www.in.gov/health/vital-records/files/2016-Indiana-Terminated-Pregnancy-Report.pdf; Indiana State Dep't of Health, 2015 Terminated Pregnancy Report (June 30, 2016) at Exec. Summ., https://www.in.gov/health/vital-records/files/2015-TP-Report.pdf.

ii. Indiana Code § 16-34-2-1(a)(2) permits abortions "during the first ten (10) weeks of postfertilization age" where the pregnancy arose from rape or incest. Only hospitals and ambulatory surgical centers majority owned by hospitals may perform abortions under subsection (a)(2). Ind. Code § 16-34-2-1(a)(2)(C).

q. Indiana Code § 16-34-2-1(a)(3) permits abortions "at the earlier of viability of the fetus or twenty (20) weeks of postfertilization age and any time after" where "necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life." Subsection (a)(3) permits abortions later in the pregnancy than subsection (a)(1), and imposes some additional requirements. Those include that the abortion be "performed in a hospital" and be "performed in compliance with" Indiana Code § 16-34-2-3. Ind. Code § 16-34-2-1(a)(3)(C)–(D).

r. Indiana Code § 16-34-2-3—which governs "abortions performed on or after the earlier" of viability or twenty (20) weeks postfertilization age—in turn requires the presence of a second physician who is prepared to provide care for any "child born alive as a result of the abortion." Ind. Code § 16-34-2-3(b); see also *Id.* Ind. Code § 16-34-2-3(a), (c)–(d) (imposing additional requirements).

s. Physicians who perform abortions outside the exceptions of S.B. 1 are subject to prosecution. Performing an abortion outside S.B. 1's exceptions is a Level 5 felony, punishable by imprisonment of one to six years and a fine of up to $10,000. § 28(7)(A) (Ind. Code § 16-34-2-7(A)); Ind. Code § 35-50-2-6(B).

t. S.B. 1 also dictates specific circumstances where a physician "shall" have their license to practice medicine revoked if they do not comply with the above-mentioned provisions. § 41(b)(2) (Ind. Code § 22-22.5-8-6(b)(2)).

u. S.B. 1 also eliminates licensed abortion clinics and requires that any abortions performed take place at a licensed hospital or ASC majority-owned by a licensed hospital ("Hospitalization Requirement"). §§ 21(1)(B), (3)(C) (Ind. Code § 16-34-2-1(1)(B), 3(C)); § 21(2)(C) (Ind. Code § 16-34-2-1(2)(C)).

v. Of the 8,414 abortions performed in Indiana in 2021, 8,281 were performed at abortion clinics that are prohibited from providing abortion care under S.B. 1. *See* 2021 Terminated Pregnancy Report at 19-20. Less than two percent of abortions in the state were performed in hospitals that are still able to provide abortions under S.B. 1. *Id.* From 2015 through 2021, very few abortions were performed at

an ASC—hospital-owned or otherwise. *See* ISDH Terminated Pregnancy Reports 2015-2020 (full citations contained in Footnote 1).

w. For patients who fall into S.B. 1's narrow exceptions, the law's requirement that they obtain care in a hospital or ASC creates a significant burden on obtaining care. Gibron Decl. ¶ 18. Abortions performed in hospitals are far more expensive than abortions performed at clinics. *Id.* S.B. 1 increases the financial burden of care for both victims of sexual violence and critically ill pregnant women—care that thousands of women safely received each year in a clinic setting prior to S.B. 1's hospitalization requirement. *Id.*; *See generally* ISDH Terminated Pregnancy Reports 2015-2020 (full citations contained in Footnote 1).

x. Women and girls choose to end a pregnancy for familial, medical, financial, personal, and other reasons. Caldwell Decl. ¶ 14. Some patients choose to obtain abortions because they are facing serious health risks, including long-term risks to their physical or mental health. *Id.* However, these risks do not always rise to the level of death or a serious risk of substantial and irreversible physical impairment of a major bodily function such that these patients would qualify for an exception under S.B. 1. *Id.*

y. Significant scientific advancements in our understanding of fetal development have come to inform the legal and moral questions surrounding abortion. *See generally* Defendants' Exhibit 1, Declaration of Tara Sander Lee.

z. Abortion continues to be a legally and morally fraught issue presenting challenges to both legislatures and courts when balancing constitutional protection of the bodily autonomy of women and girls and the policy considerations of maternal health and protection of fetal life.

## II. CONCLUSIONS OF LAW

Preliminary Injunction Standard

a. Prior to issuance of a Preliminary Injunction, four elements must be established:

i. the moving party is reasonably likely to prevail on the merits;

ii. the remedy at law is inadequate and the moving party will suffer irreparable harm pending resolution of the action;

iii. the threatened injury to the moving party if the injunction is denied outweighs the threatened harm to the adverse party if the injunction is granted; and

iv. the public interest will be disserved if the relief is not granted. *Leone v. Commissioner, Indiana Bureau of Motor Vehicles*, 933 N.E.2d 1244, 1248 (Ind. 2010).

b. If the moving party fails to prove any one of the four required elements, the application for injunction should be denied. *Id.*

c. Injunctive relief is intended to maintain the status quo as it existed prior to the pending controversy until the dispute between the parties can be decided on the merits. *In Re Rueth Development Co.*, 976 N.E.2 42 (Ind. Ct. App. 2012).

d. "Status quo" means the last actual, peaceful, and non-contested status that proceeded the pending controversy between the parties to an action. *Rees v. Panhandle Eastern Pipeline Co.*, 377 N.E.2d 640 (1978).

e. An injunction does not create or enlarge the rights of a party, it merely protects existing rights and prevents harm to the aggrieved party that cannot be corrected by final judgment. *Indiana & Michigan Elec. Co. v. Whitley County Rural Elec. Membership Corp.*, 316 N.E.2d 584, 586 (Ind. Ct. App. 1974).

Reasonable Likelihood of Prevailing on the Merits: Article I, § 1 Claim

f. Article I, § 1 of the Indiana Constitution provides:

> WE DECLARE, that all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of

these ends, the people have, at all times, an indefeasible right to alter and reform their government.

g. Plaintiffs argue that the liberty guarantee of Article I, § 1 of the Indiana Constitution provides a privacy right that includes a woman's right to determine whether she will carry a pregnancy to term. Defendants argue that no judicially enforceable right to privacy exists. Defendants additionally argue that the Court need not reach the issue of whether such a right exists because—if such a right indeed exists—it does not include a right to abortion.

h. In order to interpret the Indiana Constitution, a court must examine the language of the provision in light of the history surrounding the drafting and its ratification as well as its purpose. *City Chapel Evangelical Free Inc. v. City of South Bend ex rel. Dep't. of Redevelopment*, 744 N.E.2d 443, 447 (Ind. 2001) ("[t]he language of each provision of the Constitution must be treated with particular deference, as though every word has been hammered into place.").

i. Article I, § 1 of the Indiana Constitution is not hortatory. Although our Supreme Court has discussed the aspirational nature of similar provisions in other state constitutions, no such interpretation has been adopted. *See Doe vs. O'Connor*, 790 N.E.2d 985, 991 (Ind. 2003)(declining to decide whether Art. I, § 1, presents any justiciable issues).

j. Article I § 1 provides judicially enforceable rights. These judicially enforceable rights as to questions of bodily autonomy have been previously recognized. *See Herman v. State*, 8 Ind. 545 (1855); *Beebe v. State*, 6 Ind. 501 (1855).

k. Although liberty is an enormous concept, the Court should nonetheless attempt to understand its constitutional significance by considering its plain meaning. Liberty is defined by Black's Law Dictionary as "1. Freedom from arbitrary or undue restraint, especially by a government. 2. A right, privilege, or immunity, enjoyed by proscription or by grant; the absence of a legal duty imposed on a person." The Merriam-Webster Dictionary also provides multiple definitions including, in pertinent part, "the quality or state of being free"; "the power to do as one pleases";

"freedom from physical restraint"; "freedom from arbitrary or despotic control"; "the positive enjoyment of various social, political, or economic rights and privileges"; "the power of choice".

l. Whether a right to privacy exists under the Indiana Constitution is an open question. *See Clinic for Women, Inc. v. Brizzi*, 837 N.E.2d 973, 978 (Ind. 2005). By virtue of this question being unanswered, whether any existing right under Article I, § 1 of the Indiana Constitution runs parallel to those rights guaranteed by the Fourteenth Amendment to the United States Constitution is also an open question.

m. Our Court of Appeals previously and directly addressed the question at hand in 2004, holding that a privacy right—including a right to abortion—existed under Article I, § 1 of the Indiana Constitution, however the decision was vacated when the Indiana Supreme Court granted transfer of the matter. *Clinic for Women, Inc. v. Brizzi*, 814 N.E.2d 1042 (Ind. Ct. App. 2004), *vacated by Clinic for Women, Inc. v. Brizzi*, 837 N.E.2d 973, 978 (Ind. 2005).

n. In *Clinic for Women, Inc. v. Brizzi* (hereinafter "*Brizzi*") the Indiana Supreme specific declined to address the question of the existence of a privacy right under the Indiana Constitution, however it did generate two separate dissents, one from Justice Dickson and one from Justice Boehm, with each dissent advocating in favor of deciding the Indiana constitutional question and with each dissent reaching a different determination as to the existence of such a right. *Id.* at 988, 994.

o. The majority in *Brizzi* explicitly adopted the *Casey* decision's "undue burden" test for purposes of analyzing regulation that is alleged to violate any privacy interest that may exist under Article I, § 1 of the Indiana Constitution. *Id.* at 984.

p. The reasoning of Justice Boehm's dissent as to the potential existence of a "bundle of liberty rights" contained in the Indiana Constitution is most compelling and provides ample legal support that Plaintiffs are reasonably likely to prevail on the merits. *See Id.* at 994-1005.

q. In interpreting the Indiana Constitution, one does not need to seek inferences or penumbra to find an express liberty right—the right is contained in the text of the Indiana Constitution. *Id.* at 1002; Ind. Const. Article I, § 1.

r. The text of the Indiana Constitution is more explicit in its affirmation of individual rights and its limitation of legislative power to intrude into personal affairs than its federal counterpart. *Id.* at 1002.

s. While *Dobbs* has certainly shaken the analytical landscape where federal questions surrounding substantive due process rights are concerned, Indiana Courts are not bound by the *Dobbs* majority's analysis in interpreting our Indiana Constitution. Several provisions of the Indiana Constitution, despite having the same or similar language to an analogous provision of the United States Constitution, have been interpreted to give greater protection to the individual liberties of Hoosiers. *See, e.g., Andrews v. State*, 978 N.E.2d 494, 502-03 (Ind. Ct. App. 2012) (noting that Indiana's ex post facto clause offers greater protection than that of the United States Constitution's and stating, "Greater protection of Hoosier's rights under the Indiana Constitution is not an uncommon principle in our state's jurisprudence."), *trans. denied*; *see also State v. Gerschoffer*, 763 N.E.2d 960, 965 (Ind. 2002) (addressing Indiana's search and seizure provision and noting, "[t]he Indiana Constitution has unique vitality, even where its words parallel federal language.").

t. The Indiana Constitution also provides greater protection than its federal counterpart where the right to consultation with counsel prior to consenting to a search—and by extension privacy—is concerned. *See, e.g., Pirtle v. State*, 323 N.E.2d 634 (Ind. 1975).

u. There is within each provision of our Bill of Rights a cluster of essential values which the legislature may qualify through the proper use of its police power but may not alienate. *Price v. State*, 622 N.E. 2d 954, 960 (Ind. 1993).

v. Bodily autonomy has been recognized in Indiana case law as a basic component of liberty. *See e.g. In re Lawrance*, 579 N.E.2d 32, 39 (Ind. 1991).

w. A core value is materially burdened when "the right, as impaired, would no longer serve the purpose for which it was designed." *Price*, at 961.

x. The material burden test is failed if a state regulation totally blocks the purpose for which the constitutional right was designed. But a lesser impairment can also constitute a material burden. A state regulation creates a material burden if it imposes a substantial obstacle on a core constitutional value serving the purpose for which it was designed. *Clinic for Women, Inc. v. Brizzi*, at 984.

y. In *Brizzi,* the Indiana Supreme Court held that *Price's* material burden test is the equivalent of *Casey's* undue burden test, at least for purposes of assessing whether

a state regulation violates any fundamental right of privacy that may include protection of a woman's right to terminate her pregnancy that might exist under Article I, § 1 of the Indiana Constitution. *Id.*

z. The debates of our Constitutional Convention leading up to ratification of the current Indiana Constitution suggest that those who wrote our Indiana Constitution believed that liberty included the opportunity to manage one's own life except in those areas yielded up to the body politic. *In re Lawrance*, at 39. The common law, our constitution, and Indiana's statutes all reflect a commitment to self-determination. *Id.*

aa. The Court acknowledges that abortion was not lawful at the time the Indiana Constitution was ratified. However, this does not foreclose the language of Article I, § 1 from being interpreted at this point as protecting bodily autonomy, including a qualified right by women not to carry a pregnancy to term. The significant, then-existing deficits of those who wrote our Constitution—particularly as they pertain to the liberty of women and people of color—are readily apparent. As Justice Boehm points out in his *Brizzi* dissent, "[i]n 1851 we had slavery in many states and Article II, Section 5 of the 1851 Constitution denied the right to vote on the basis of race. Married women had no property rights until they were conferred by statute in 1923. Both of these subjects were debated at length in the 1851 Constitution, but both were left in a state that, by today's lights, is wholly incompatible with fundamental principles of ordered liberty." *Brizzi* at 999. Our analysis here cannot disregard this reality, particularly when considering questions of bodily autonomy.

bb. Regardless of whether the right is framed as a privacy right, a right to bodily autonomy, a right of self-determination, a bundle of liberty rights, or by some other appellation, there is a reasonable likelihood that decisions about family planning, including decisions about whether to carry a pregnancy to term—are included Article I, § 1's protections.

cc. It is without question that the State has an interest in regulating abortion. Plaintiffs concede as much at oral argument. State interests in abortion regulation can include protection of maternal health, preserving fetal life, maintaining societal ethics, promulgating medical ethical standards, and creating bright line rules distinguishing between infanticide and lawful abortion to name a few. *See Dobbs*, at 2312 (Roberts, C.J., *concurring in the Judgment*).

dd. It is also without question that the judicially enforceable liberty rights that are reasonably likely to exist under Article I, § 1 are not unqualified. S.B. 1, however, materially burdens Hoosier women and girls' right to bodily autonomy by making that autonomy largely contingent upon first experiencing extreme sexual violence or significant loss of physical health or death.

ee. S.B. 1 also materially burdens the bodily autonomy of Indiana's women and girls by significantly and arbitrarily limiting their access to care. S.B. 1 does so by

requiring women and girls to seek treatment at hospitals or ambulatory surgery centers that are majority hospital-owned. The huge majority of abortions are performed in the clinic setting. The evidence supports that the hospitalization requirement is likely to significantly limit the availability of the procedure (even for currently excepted rape and incest victims), will likely significantly increase the cost, and is unlikely to increase the safety of Hoosier women and girls. The Indiana State Health Department's own reports support the contention that abortion clinics are capable of safely providing the treatment. *See generally* ISDH Terminated Pregnancy Reports 2015-2020 (full citations contained in Footnote 1).

ff. Because of these considerations, and the history of Indiana's Constitution being interpreted to provide greater protection to individual citizens than its federal counterpart, there is a reasonable likelihood that this significant restriction of personal autonomy offends the liberty guarantees of the Indiana Constitution and the Plaintiffs will prevail on the merits as to their claim that S.B. 1 violates Article I, § 1 of the Indiana Constitution.

Likelihood of Prevailing on the Merits: Article I, § 23 Claims

gg. The Court limits the analysis here to the stand-alone claim that S.B. 1 violates Article I, § 23 of the Indiana Constitution and does not address any undue/material burden analysis that may be applicable to other claims.

hh. Plaintiffs argue that S.B. 1 "violates Article 1, Section 23's guarantee of equal privileges and immunities by discriminating against abortion providers." Pls. Br. 20. Section 23 provides that "[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." Ind. Const. Art. I, § 23. Under that clause, any "disparate treatment" must be "reasonably related to inherent characteristics which distinguish the unequally treated classes," and any "preferential treatment" must be "uniformly applicable and equally available to all persons similarly situated." *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 382 (Ind. 2017) (quoting *Myers v. Crouse-Hinds Div. of Cooper Indus., Inc.*, 53 N.E.3d 1160, 1165 (Ind. 2016)).

ii. In this context, "'inherent' does not refer only to immutable or intrinsic attributes, but to *any* characteristic sufficiently related to the subject matter of the relevant . . . classes." *Whistle Stop Inn, Inc. v. City of Indianapolis*, 51 N.E.3d 195, 200 (Ind. 2016) (emphasis added). Courts, moreover, must "accord the legislature substantial deference when making classifications and require the plaintiff to 'negate every conceivable basis which might have supported the classification.'" *KS&E Sports v. Runnels*, 72 N.E.3d 892, 906 (Ind. 2017) (quoting *Whistle Stop Inn*, 51 N.E.3d at 199).

jj. S.B. 1 does not discriminate against abortion providers PPGNHAIK, Women's Med, and Whole Woman's Health. Under S.B. 1, those Parties can continue performing abortions if they meet the licensing requirements for a "hospital licensed under IC 16-21 or an ambulatory surgical center (as defined in IC 16-18-2-14) that has a majority ownership by a hospital licensed under IC 16-21." Ind. Code § 16-34-2-1(a)(1)(B); *see id.* § 16-34-2-1(a)(2)(C), (a)(3)(C).

kk. Even if S.B. 1 is viewed as treating abortion clinics operated by PPGNHAIK, Women's Med, and Whole Woman's Health differently from and less favorably than hospitals and ASCs, any differential treatment would be reasonably related to inherent characteristics that distinguish those classes. Post-*Dobbs*, and absent protection of abortion by the Indiana Constitution (which is addressed separately herein) there is no requirement that the State codify and recognize abortion clinics as a separate classification of medical facility.

ll. Significantly, abortion clinics are licensed separately from hospitals and surgical centers. For hospitals and surgical centers, the Centers for Medicare and Medicaid Services impose minimum inspection requirements. *See* Centers for Medicare & Medicaid Services, *Fiscal Year (FY) 2021 Mission & Priority document (MPD)—Action*, at 11, https://www.cms.gov/files/document/fy-2021-mpd-admin-info-20-03-all.pdf. Private accrediting organizations can conduct those inspections. The Indiana Department of Health thus does not need to independently inspect hospitals accredited by private accrediting bodies to ensure compliance with health and safety standards. *See* Ind. Code § 16-21-2-13(a)(2). Because no similar accrediting organization exists for abortion clinics, however, any inspections must be done by the Indiana Department of Health. The increased burdens on the State associated with maintaining a separate licensing and inspection regime for abortion clinics is a legitimate and reasonable rationale for ending that regime.

mm. For the forgoing reasons, the Plaintiffs are unlikely to prevail on the merits as to their Article I § 23 claim.

Likelihood of Prevailing on the Merits: Article I, § 12 Claim

At hearing, Plaintiffs withdrew their Article I, § 12 claim based upon the asserted position contained Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction filed on September 16, 2022.

Adequacy of Remedy at Law/Irreparable Harm

nn. The Plaintiffs carry the burden to show that the remedy at law is inadequate and that they will suffer irreparable harm pending resolution of the action. *Leone* at 1248.

oo. Plaintiffs have standing to raise the injury claims of their clients and patients. See, e,g., *In re Ind. Newspapers, Inc.*, 963 N.E. 2d 534, 549 (Ind. Ct. App. 2012); *Planned Parenthood of Ind. v. Carter*, 854 N.E.2d 853, 870 (Ind. Ct. App. 2006); see also *Planned Parenthood of Wisc. v. Doyle*, 162 F.3d 463, 465 (7th Cir. 1998)(citing cases).

pp. Our Court of Appeals has stated that "[a] litigant may raise a claim on behalf of a third party if the litigant can demonstrate that he has suffered a concrete, redressable injury, that he has a close relation with the third party, and that there exists some hindrance to the third party's ability to protect his own interests." *Planned Parenthood of Ind. v. Carter* at 870 (*citing Osmulski v. Becze*, 638 N.E.2d 828, 833-34 (Ind. Ct. App. 1994)).

qq. For the reasons outlined in the analysis of the Article I § 1 claim, Plaintiffs have demonstrated that there is a reasonable likelihood that S.B. 1 violates the Indiana Constitution, which is a *per se* irreparable harm for purposes of preliminary junction analysis. *See Planned Parenthood of Ind. v. Carter* at 864.

rr. This factor supports the Plaintiffs' claim for injunctive relief.

Weighing of Harms

ss. Plaintiffs must show that their threatened injury if the injunction is denied outweighs the threatened harm to the Defendants if the injunction is granted. *Leone* at 248.

tt. S.B. 1 was effective on September 15, 2022. Because the Plaintiffs have demonstrated a reasonable likelihood of prevailing on the merits, the potential constitutional deprivations for Indiana women and girls should be given significant weight in this balancing.

uu. As mentioned previously, the State has an interest in regulating abortion so long as that regulation is not in violation of the Indiana Constitution. The Defendants' ability to enforce abortion regulations continues with maintenance of the status

quo, however it does not continue to the breadth and degree S.B. 1 contemplates. The named Defendants have statutory duties of enforcement that will either track S.B. 1 as enacted or, if the relief is granted, would be subject to the status quo.

vv. The state constitutional issues have never been directly addressed by our Supreme Court. *Clinic for Women v. Brizzi* at 978. However, multiple surrounding State Courts have found likely merit in what appear to be similar claims under their respective state constitutions. *See Doe v. O'Connor*, 781 N.E.2d 672, 674, (Ind. 2003)(generally supporting the proposition that the openness of a constitutional question as well as determination of similar issues by other jurisdictions in a manner favorable to the moving party may be a consideration in granting injunctive relief); Ex. 1-3 to Plaintiffs' Reply in Support of the Motion for Preliminary Injunction.

ww. On balance, the weighing of these harms favors granting injunctive relief.

Public Interests

xx. Plaintiffs also carry the burden to show that public interest will be disserved if the relief is not granted. *Leone* at 1248.

yy. The public has an interest in Plaintiffs' constitutional rights being upheld. *See, e.g., Carter*, 854 N.E.2d at 881–83.

zz. Plaintiffs have also demonstrated that the public has an interest in Hoosiers being able to make deeply private and personal decisions without undue governmental intrusion.

aaa. In considering the public interests, the Court must consider the constitutional rights of Indiana women and girls, but the Court cannot and should not disregard the legitimate public interest served by protecting fetal life. The Court specifically acknowledges the significant public interest in both.

bbb. If injunctive relief is granted, the public will continue to be subject to the previous abortion regulation regime that was significantly influenced by the United States Supreme Court juris prudence that identified and expressly reaffirmed a privacy right that included abortion for nearly fifty years. Staying enforcement of S.B. 1 maintains that fifty-year-old scheme long enough for the Court to address the issue on the merits.

ccc. Weighing the considerations, the Court concludes that the public interest will be disserved by if the relief is not granted.

ddd. The Plaintiffs have shown by a preponderance of the evidence that: (1) there is a reasonable likelihood of success on the merits, (2) their remedies at law are inadequate, resulting in irreparable harm pending resolution of the substantive action if a preliminary injunction is not granted, (3) that the balance of harms favors preliminary injunction such that the threatened injury to the Plaintiffs outweighs the injunction's potential harm to the Defendants, and (4) that the public interest would not be disserved by the relief. *Kuntz v. EVI, LLC*, 999 N.E.2d 425, 427-428 (Ind. Ct. App. 2013). Plaintiffs are entitled to the injunctive relief they seek.

**ORDERS**

Based upon the foregoing analysis, the Court hereby GRANTS Plaintiffs' Motion for Preliminary Injunction. It is therefore ORDERED that Defendants shall be enjoined from enforcing the provisions of S.B. 1 as enacted in Titles 16, 25, 27, and 35 of the Indiana Code pending trial on the merits. No bond shall be required of Plaintiffs.

So ORDERED this 22nd day of September, 2022.

Kelsey B. Hanlon, Special Judge
Monroe Circuit Court

Dist:

Parties and Counsel through IEFS