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TETON COUNTY, WYOMING

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**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;)

Plaintiffs,)

v.)

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,)

Defendants.)

Civil Action No. 18853

**STATE DEFENDANTS' RESPONSE TO
MOTION FOR TEMPORARY RESTRAINING ORDER**

On March 21, 2023, Plaintiffs, 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, filed an amended complaint for declaratory judgment and injunctive relief in this Court. In the amended complaint, Plaintiffs ask this Court, *inter alia*, to declare that the recently enacted Senate File 109 (hereinafter “the chemical abortion statute”) violates the Wyoming Constitution. (Am. Compl. at 2). They also ask this Court to enjoin the chemical abortion statute “from taking effect and/or being enforced during the pendency of this action.” (*Id.*). On May 10, 2023, Plaintiffs filed a motion for a temporary restraining order (TRO) asking this Court to enjoin the enforcement of the chemical abortion statute during the pendency of this action. (Pls.’ TRO mem. at 2).

Defendants, State of Wyoming, Wyoming Governor Mark Gordon, and Wyoming Attorney General Bridget Hill, hereby respond to the motion for TRO. For the reasons explained below, this Court should deny the motion in its entirety.

Introduction

Wyoming Supreme Court precedent has long held that temporary injunctive relief in all of its forms (including TROs) is an extraordinary remedy that should be granted with great caution. This admonition is particularly true when a temporary injunction will enjoin a statute because, in that circumstance, the judicial branch would be exercising its constitutional powers to restrain the constitutional powers of the legislative and executive branches.

To assure that the issuance of a temporary injunction against a statute will not impermissibly infringe upon the constitutional authority of the co-equal branches of state government, Wyoming Supreme Court precedent requires the party asking for a temporary injunction to clearly show that the statute in question is likely unconstitutional. The party

asking for a temporary injunction also must show that she may be irreparably injured if the statute remains in effect during the litigation.

Here, Plaintiffs have limited their likelihood of success argument to article I, section 38 in the Wyoming Constitution, so they must show that the chemical abortion statute on its face likely violates the right to make health care decisions conferred by section 38. They have not made the required showing because the chemical abortion statute does not fall within the scope of section 38(a). But even if it does, Plaintiffs have not established that the chemical abortion statute violates section 38 in all circumstances or that the statute impermissibly restricts the right conferred by section 38. As a result, they are not entitled to the requested temporary injunction.

Plaintiffs also have not shown that one or more of them possibly will suffer irreparable injury if the chemical abortion statute takes effect. Dr. Anthony, Dr. Hinkle, and the two non-profit corporations lack standing to challenge the constitutionality of the chemical abortion statute under section 38, so they will suffer no injury under section 38(a) if the chemical abortion statute takes effect. Ms. Dow and Ms. Johnson also will not be injured if the statute takes effect because their alleged injuries under section 38(a) are too speculative to justify temporary injunctive relief.

When all is said and done, Plaintiffs are not entitled to a TRO just because they dislike the policies embodied in the chemical abortion statute. To be entitled to a TRO, they must establish that the chemical abortion statute is likely unconstitutional on its face and that one or more of the Plaintiffs may suffer irreparable injury if the statute takes effect.

The law requires them to show both and they have shown neither. As a result, this Court should deny the motion for TRO in its entirety.

Relevant Factual Background

Plaintiffs allege that the chemical abortion statute is unconstitutional on its face. (See generally Am. Compl.). In their motion for a TRO, Plaintiffs limit their argument to one provision in the Wyoming Constitution – article 1, section 38. (Pls.’ TRO mem. at 11-16). In support of their request for a TRO, Plaintiffs have submitted either an affidavit or a declaration from each Plaintiff. (Pls.’ TRO mem., Exs. 3-8). This Court should not consider any of the affidavit or declaration testimony in assessing whether Plaintiffs likely will succeed on the merits of their section 38 claim.

A facial challenge to the constitutionality of a statute “is just that—a challenge to the terms of the statute[.]” *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012) (alteration added). To assess the facial constitutionality of the chemical abortion statute, this Court should only consider “whether the statute’s language violates the constitution, not whether the statute would be unconstitutional ‘as applied’ to the facts of [this] particular case.” *Timstall v. Bergeson*, 5 P.3d 691, 701 (Wash. 2000) (en banc) (alteration added); see also *Freedom Path, Inc. v. IRS*, 913 F.3d 503, 508 (5th Cir. 2019) (same); *Gainesville Woman Care, LLC v. State*, 210 So.3d 1243, 1264 (Fla. 2017) (same).

Wyoming Supreme Court precedent precludes this Court from considering testimony from third parties in making this assessment. It is well established that testimony regarding the legislative intent of a statute from legislators involved in the enactment of that statute is not a proper source of legislative history. *Indep. Producers Mktg. Corp. v.*

Cobb, 721 P.2d 1106, 1108 (Wyo. 1986); *Mountain Cement Co. v. S. of Laramie Water & Sewer Dist.*, 2011 WY 81, ¶ 55 n.12, 255 P.3d 881, 902 n.12 (Wyo. 2011). As a result, this Court cannot rely on such testimony to discern the intent of a statute. See *Greenwall v. Rain Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 52, 71 P.3d 717, 735 (Wyo. 2003).

If testimony from the legislators who were involved in the enactment of section 38 is not legally relevant in determining the intent of the provision, then the affidavit and declaration testimony from Plaintiffs is not legally relevant to this Court's analysis of whether Plaintiffs likely will succeed on the merits of their section 38 claim. This Court, therefore, should limit its likelihood of success inquiry to discerning the intent of the chemical abortion statute and section 38 and assessing whether the chemical abortion statute passes constitutional muster.

However, that is not to say that extrinsic facts or information have no role in constitutional and statutory interpretation and construction. In interpreting constitutional or statutory text, this Court generally should not consider extrinsic facts or information if the language is unambiguous; although this Court may look to extrinsic information to confirm the plain meaning of the language. See, e.g., *Solvay Chems., Inc. v. Wyo. Dep't of Revenue*, 2022 WY 122, ¶ 25, 517 P.3d 1123, 1131-32 (Wyo. 2022) (stating the rule for statutory interpretation); *Powers v. State*, 2014 WY 15, ¶¶ 39-55, 318 P.3d 300, 314-319 (Wyo. 2014) (the Wyoming Supreme Court used extrinsic information to confirm the plain meaning of an unambiguous constitutional provision).

If the constitutional or statutory language is ambiguous, then this Court should look to extrinsic facts or information regarding the constitutional history or legislative history.

to discern the intent of the framers or the legislature. See *Saunders v. Hornecker*, 2015 WY 34, ¶ 23 n.3, 344 P.3d 771, 778 n.3 (Wyo. 2015); *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm'n*, 845 P.2d 1040, 1066 (Wyo. 1994). This Court may also consider extrinsic facts or information regarding “the mischief the provision was intended to cure, the historical setting surrounding its enactment, the public policy of the state, and other surrounding facts and circumstances” to discern the intent of constitutional or statutory language. *Cantrell v. Sweetwater Cnty. Sch. Dist. No. 2*, 2006 WY 57, ¶ 6, 133 P.3d 983, 985 (Wyo. 2006); *Parker Land & Cattle Co.*, 845 P.2d at 1066.

Although the affidavit and declaration testimony should not be considered in assessing whether Plaintiffs likely will succeed on their section 38 claim, historical information will inform this Court’s assessment if this Court concludes that section 38 is ambiguous. In particular, the history of state regulation of abortion in Wyoming and the legislative history of article 1, section 38 are relevant to this Court’s constitutional and statutory interpretation analyses.

I. The History of State Regulation of Abortion in Wyoming

In Wyoming, abortion has been regulated by statute since the first year that Wyoming was designated as a Territory of the United States. See Gen. Laws Terr. of Wyo., ch. 3, Title 1, § 25 (1869). As the following overview shows, the public policy of the State of Wyoming is, and always has been, to prohibit and criminalize abortion (subject to limited exceptions).

From 1869 until 1884, abortion was a crime and the criminal abortion statute had no exceptions. Gen. Laws Terr. of Wyo., ch. 3, Title 1, § 25 (1869). From 1884 until 1973,

abortion was a crime but the criminal abortion statute had an exception that allowed for an abortion when necessary to preserve the life of the pregnant woman. Wyo. Rev. Stat. § 879 (1887); Wyo. Rev. Stat. § 4969 (1899); Wyo. Comp. Stat. § 5808 (1910); Wyo. Comp. Stat. § 7086 (1920); Wyo. Rev. Stat. § 32-222 (1931); Wyo. Comp. Stat. § 9-223 (1945); Wyo. Stat. § 6-77 (1957).

In January 1973, the United States Supreme Court held that the United States Constitution protects a woman's right to have an abortion before viability. *See generally Roe v. Wade*, 410 U.S. 113 (1973). Seven months after *Roe* was decided, the Wyoming Supreme Court declared the Wyoming criminal abortion statute to be unconstitutional. *Doe v. Birk*, 513 P.2d 643, 644-45 (Wyo. 1973). In 1977, the Wyoming Legislature adopted a statute (the post-*Roe* abortion statute) that prohibited abortion after viability "except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment." Wyo. Stat. Ann. § 35-6-102 (1977). A separate statute made it a felony to violate the abortion statute. Wyo. Stat. Ann. § 35-6-110 (1977).

In July 2022, the post-*Roe* abortion statute was repealed after the United States Supreme Court overruled *Roe* in *Dobbs v. Jackson Women's Health Organization*, — U.S. —, 142 S. Ct. 2228 (2022). The Wyoming Legislature replaced the post-*Roe* statute with a statute (the post-*Dobbs* abortion statute) that prohibited abortion generally, but permitted an abortion when necessary to preserve the pregnant woman "from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function" or when the pregnancy was the result of incest or sexual assault. Wyo. Stat. Ann. § 35-6-102(b)

(2022). A separate statute made it a felony to violate § 35-6-102(b). See Wyo. Stat. Ann. § 35-6-110 (2022).

In March 2023, the post-*Dobbs* abortion statute was repealed and replaced with the Life is a Human Right Act (Life Act), Wyo. Stat. Ann. §§ 35-6-120 to -138. In the Life Act, the Wyoming Legislature significantly revised the statutes governing the regulation of abortion by creating several new statutes, by renumbering several existing statutes, and by repealing several existing statutes. (Attach. B, §§ 1, 4, 5). The Life Act generally prohibits abortion, subject to four exceptions. See Wyo. Stat. Ann. §§ 35-6-123, -124. It also makes abortion a crime unless one of the exceptions applies. Wyo. Stat. Ann. § 35-6-125(a). This Court has temporarily enjoined enforcement of the Life Act. (Order Granting Mot. for TRO dated March 22, 2023; Order Granting Mot. for TRO dated April 17, 2023).

In 2023, the Wyoming Legislature also enacted the chemical abortion statute: (Attach. A). Subsection (a) in the chemical abortion statute provides as follows:

(a) Notwithstanding any other provision of law, 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.

(Attach. A – Wyo. Stat. Ann. § 35-6-120(a)).¹

¹ The statute number for the chemical abortion statute (§ 35-6-120) conflicts with the first statute number in the Life is a Human Right Act (also § 35-6-120). (Compare Attach. A at 1 with Attach. B at 1). In Wyoming, “[t]he legislative service office may change statute section numbers or headnotes before or after passage of the act as necessary to correct errors or conform statute numbers or headnotes to reflect amendments made by the legislature to the text of the bill.” Wyo. Stat. Ann. § 8-1-105(c). The Legislative Service Office thus likely will conform or correct the numbering of the chemical abortion statute.

The prohibition on chemical abortions is subject to three exceptions – one for use of contraceptives before conception or “before pregnancy can be confirmed through conventional medical testing;” one for the “treatment of a natural miscarriage according to currently accepted medical guidelines;” and one for treatment as necessary to preserve the life or health of the pregnant woman or if the pregnancy is the result of incest or sexual assault. (Attach. A – Wyo. Stat. Ann. § 35-6-120(b)(i)-(iii)). Under the third exception, the prohibition in subsection (a) shall not apply to:

(iii) Treatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. As used in this paragraph, “imminent peril” means only a physical condition and shall not include any psychological or emotional conditions. No medical treatment shall form the basis for an exception under this paragraph if it is based on a claim or diagnosis that the pregnant woman will engage in conduct which she intends to result in her death or other self-harm.

(Attach. A – Wyo. Stat. Ann. § 35-6-120(b)(iii)).

Any physician or other person who violates § 35-6-120(a) is guilty of a misdemeanor. (Attach. A – Wyo. Stat. Ann. § 35-6-120(c)). Anyone convicted of violating § 35-6-120(a) may be imprisoned for not more than six months, fined not more than \$9,000, or both. (*Id.*). The chemical abortion statute specifically provides that “[a] woman upon whom a chemical abortion is performed or attempted shall not be criminally prosecuted[.]” (Attach. A – Wyo. Stat. Ann. § 35-6-120(d)) (alterations added).

In the enrolled act that created the chemical abortion statute, the Wyoming Legislature also amended two definitions in § 35-6-101: (Attach. A at § 2). In March 2023, the enrolled act that created the Life Act repealed § 35-6-101 in its entirety. (Attach. B at

§ 5). The amendments to § 35-6-101 do not take effect until July 1, 2023, so it appears that those amendments will have no force and effect because § 35-6-101 has been repealed.

II. The Legislative History of Article 1, Section 38

During the 2011 legislative session, Senate Joint Resolution No. SJ0002 was introduced to create a new section 24 in article 7 of the Wyoming Constitution.² The introduced version of SJ0002 created seven subsections in the proposed article 7, section 24. Subsection (a) provided that “[a]ll persons shall have the right to choose and provide for their own health care.” (See <https://wvleg.gov/2011/Introduced/SJ0002.PDF> at 2). Subsections (b), (c), and (e) essentially prohibited any person from being compelled under federal or state law to participate in any health care system. (*Id.* at 2-3). Subsection (d) authorized persons and employers to pay directly for health services and authorized health care providers to “accept direct payment for lawful health care services[.]” (*Id.* at 2-3). Subsection (f) listed four things the proposed section 24 did not do, including that it did not “[a]ffect which health care services are permitted by law[.]” (*Id.* at 3-4). Subsection (g) provided definitions for certain words or phrases used in SJ0002, including the phrase “lawful health care services.” (*Id.* at 4-5).

As SJ0002 made its way through the legislative process, it was amended six times – four times in the Senate and twice in the House of Representatives. (Attach. C – *Journal of the Senate of the Sixty-First Legislature of Wyo.* 294-300 (Gen. Sess. Jan. 11, 2011).

² See <https://wvleg.gov/2011/Introduced/SJ0002.PDF>.

through March 3, 2011)). Of these six amendments, two amendments adopted by the Senate provide possible insight into the legislative intent of article 1, section 38.

In Comité of the Whole, the Senate adopted an amendment (SJ0002SW001) offered by Senator Schiffer (Attach. C – 2011 Senate Journal 295-96). The Schiffer amendment significantly altered the language and structure of the introduced version of SJ0002. (*Id.*) The amendment renumbered the proposed constitutional provision as article 1, section 38 with the catchline “Right of health care access.” (Attach. C – 2011 Senate Journal 296). The seven subsections in the introduced version were replaced with the following sentence:

The right to health care access as defined by the legislature is reserved to the citizens of the state of Wyoming.

(*Id.*);

On second reading, the Senate adopted a new amendment (SJ0002S2001) offered by Senator Perkins. (Attach. C – 2011 Senate Journal 297). The Perkins amendment deleted much of the Schiffer amendment language in favor of new language and a new structure for the proposed constitutional provision. (*Id.*) Under the Perkins amendment, the placement of the provision remained as article 1, section 38 and continued to be entitled “Right of health care access.” (*Id.*) The Perkins amendment created four subsections in section 38. Subsection (a) provided as follows:

Each competent adult shall have the right to make his or her own healthcare decisions. The parent, guardian or legal representative of any other natural person shall have the right to make healthcare decisions for that person.

(*Id.*). Subsection (b) authorized any person to pay directly for health services and health care providers to accept direct payment for health services. (*Id.*). Subsection (c) provided that the Wyoming Legislature “may determine reasonable and necessary restrictions on the rights granted” under section 38 “to protect the health and general welfare of the people and accomplish the purposes set forth in the Wyoming Constitution.” (*Id.*). Subsection (d) directed the State of Wyoming to act to preserve the rights conferred by section 38 “from undue governmental infringement.”³ (*Id.*).

SJ0002 appeared on the ballot as Constitutional Amendment A at the general election held on November 6, 2012.⁴ The endorsement language for Constitutional Amendment A provided as follows:

The adoption of this amendment will provide that the right to make health care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and any health care provider to receive direct payment for services. The amendment permits the legislature to place reasonable and necessary restrictions on health care consistent with the purposes of the Wyoming Constitution and provides that this state shall act to preserve these rights from undue governmental infringement.

(<https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>, at 2);

The voters approved Constitutional Amendment A.⁵ The version of article 1, section 38 approved by the voters provides as follows:

(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

³ On third reading, the Senate adopted an amendment to clarify language in subsection (c) and to clarify the endorsement language. (Attach. C – 2011 Senate Journal 298).

⁴ See generally <https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>.

⁵ See generally <https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf> at 1.

other natural person shall have the right to make health care decisions for that person.

(b) Any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so.

(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.

Wyo. Const. art. 1, § 38.

Legal Standard

In Wyoming, state statute and case law govern the substantive requirements for the issuance of a temporary injunction with notice to the adverse party. Wyoming Statute § 1-28-102 provides, in pertinent part:

When it appears by the petition that the plaintiff is entitled to relief consisting of restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when during the litigation it appears that the defendant is doing, threatens to do, or is procuring to be done some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary order may be granted restraining the act. ...

Wyo. Stat. Ann. § 1-28-102.

"[T]he award of a temporary injunction is an extraordinary remedy which will not be granted except upon a clear showing of probable success and possible irreparable injury to the plaintiff, lest the proper freedom of action of the defendant be circumscribed when no wrong has been committed." *Weiss v. State ex rel. Danigan*, 434 P.2d 761, 762.

(Wyo. 1967) (emphasis added). “The purpose of a temporary injunction is to preserve the status quo until the merits of an action can be determined.” *Id.*

Requests for injunctive relief “are not granted as a matter of right but are within the lower court’s equitable discretion.” *In re Kite Ranch, LLC v. Powell Family of Yakima, LLC*, 2008 WY 39, ¶ 21, 181 P.3d 920, 926 (Wyo. 2008). “Injunction is an extreme remedy,” so a reviewing court “should proceed with caution and deliberation before exercising the remedy.” *In re Kite Ranch*, ¶ 21, 181 P.3d at 926 (citation and internal quotation marks omitted). “To justify an injunction, there must be a showing the potential harm is irreparable and there is no adequate remedy at law to compensate for the harm.” *In re Kite Ranch*, ¶ 22, 181 P.3d at 926. Moreover,

[i]n 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 statu quo* until a hearing upon the merits, without expressing, and indeed without having the means of forming a final opinion as to such rights.

CBM Geosolutions, Inc. v. Gas Sensing Tech., Inc., 2009 WY 113, ¶ 7, 215 P.3d 1054, 1057 (Wyo. 2009) (quoting *Stowe v. Powers*, 116 P. 576, 581 (Wyo. 1911)).

To be entitled to temporary injunctive relief, Plaintiffs must clearly show both probable success on the merits of their section 38 claim and possible irreparable injury to their interests under section 38 if a temporary injunction does not issue.

Argument

I. Plaintiffs have not clearly shown that the chemical abortion statute likely is facially unconstitutional.

For the probable success prong, Plaintiffs must clearly show that they likely will succeed on the merits of their claim that the chemical abortion statute is facially unconstitutional under section 38. *See, cf., CBM Geosolutions*, ¶ 8, 215 P.3d at 1057-58 (explaining that “likelihood of success on the merits is a factor that a district court must consider before granting a preliminary injunction” under the temporary injunction standard set forth in *Weiss*). As the party challenging the constitutionality of the chemical abortion statute, Plaintiffs bear a “heavy” burden of “clearly and exactly” showing that the statute is facially unconstitutional “beyond any reasonable doubt.”⁶ *Powers*, ¶ 7, 318 P.3d at 303 (citations omitted).

To satisfy this burden, Plaintiffs must show they have a constitutionally protected right under section 38 and that the chemical abortion statute on its face infringes upon that right in an impermissible way. *Baessler v. Freier*, 2011 WY 125, ¶ 13, 258 P.3d 720, 725 (Wyo. 2011). And, because they are challenging the constitutionality of the statute on its face, they “must establish that no set of circumstances exists under which the [chemical abortion statute] would be valid.” *Dir. of Off. of State Lands & Invs. v. Merbanco, Inc.*,

⁶ Plaintiffs assert that the State Defendants have the burden to show that the chemical abortion statute is constitutional. (Pls.’ TRO mem. at 11 n.4) (citing *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022)). In essence, Plaintiffs are saying that this Court should apply a strict scrutiny test in assessing their section 38 claim. For the reasons explained in section I(C) below, the strict scrutiny test does not apply to section 38.

2003 WY 73, ¶ 32, 70 P.3d 241, 252 (Wyo. 2003) (citation and internal quotation marks omitted). (alteration added).

To prevail on the probable success prong, Plaintiffs must clearly show that the chemical abortion statute may be unconstitutional under section 38 in all circumstances. As explained below, they have not done so.

A: Plaintiffs have not clearly shown that the chemical abortion statute falls within the scope of section 38(a).

Plaintiffs assert that the chemical abortion statute on its face unduly infringes upon the right to make health care decisions conferred by article 1, section 38 of the Wyoming Constitution. (Pls.' TRO mem. at 11). For this to be true, Plaintiffs first must show that the restrictions in the chemical abortion statute falls within the scope of section 38(a). If they succeed in doing so, then they also must show that the restrictions in the chemical abortion statute impermissibly infringe upon the right to make health care decisions in all circumstances.

To assess the facial constitutionality of the chemical abortion statute, this Court must define the scope of the right conferred by section 38(a) and then examine whether the chemical abortion statute impermissibly infringes upon that right in all circumstances. Section 38 provides as follows:

(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.

Wyo. Const. art 1, § 38(a) (emphasis added).

Two terms define the scope of section 38(a) – “health care” and “own.” For the reasons explained below, the chemical abortion statute is not facially unconstitutional because it does not fall within the scope of section 38(a):

1. **The chemical abortion statute falls outside the scope of section 38(a) because abortion is not health care.**

Plaintiffs assert that the chemical abortion statute impermissibly violates section 38(a) because abortion is “health care.” (Pls.’ TRO mem. at 11-13). They offer two arguments in this regard. Neither argument has merit.

First, Plaintiffs argue that the plain meaning of the term “health care” in section 38(a) includes abortion because the term “health care” means “the services provided, usually by medical professionals, to maintain and restore health.” (Pls.’ TRO mem. at 12) (citing April 2023 TRO Order at ¶¶ 33, 39). This argument fails because it does not account for the full meaning of “health care.”

At the time section 38 was adopted, “health care” meant “[c]ollectively, the services provided, usu. by medical professionals, to maintain and restore health.” *Black’s Law Dictionary* 835 (10th ed. 2014) (alterations added); see also *Merriam-Webster’s Coll. Dictionary* 574 (11th ed. 2012) (defining “health care” as “efforts made to maintain or restore health, esp. by trained and licensed professionals”). The word “health” refines the definition of “health care.” At the time section 38 was adopted, “health” meant “[t]he quality, state, or condition of being sound or whole in body, mind, or soul; esp. freedom from pain or sickness.” *Black’s Law Dictionary* 835 (10th ed. 2014) (alteration added); see also *Merriam-Webster’s Coll. Dictionary* 574 (11th ed. 2012) (defining “health” as “the

condition of being sound in body, mind, or spirit; *esp.*: freedom from physical disease or pain”) (italics in original).

Given these definitions, the common meaning of the term “health care” consists of four components: (1) services; (2) usually provided by medical professionals; (3) to restore or maintain the body, mind, or spirit; (4) from pain, physical disease, or sickness. Plaintiffs’ argument addresses only the first two components. They do not explain how or why getting an abortion maintains or restores the body, mind, or spirit of the pregnant woman from pain, physical disease, or sickness. As a result, they have not shown that the term “health care” in section 38(a) includes a right to have an abortion.⁷

Plaintiffs point out that, in the April 2023 TRO Order, this Court relied on written testimony from Dr. Anthony and Dr. Hinkle to conclude that “abortions are utilized by medical professionals to restore and maintain the health of their patients.” (Pls.’ TRO mem. at 12) (quoting April 2023 TRO Order at ¶ 39). As a matter of law, however, such third party testimony cannot be used to discern the intent of section 38(a). As explained earlier, Wyoming Supreme Court precedent precludes this Court from considering testimony from legislators involved in the enactment of a statute to discern the intent of the statute. *Indep. Producers Mktg. Corp.*, 721 P.2d at 1108; *Mountain Cement Co.*, ¶ 55 n.12.

⁷ Plaintiffs quote language from various documents published by different sources (a medical group, a federal agency, a non-governmental organization, and a Wyoming state agency) in an attempt to show that the plain meaning of “health care” includes abortion. (Pls.’ TRO mem. at 12-13) (citations omitted). However, they have not explained how or why this information is relevant to the question of what the Wyoming Legislature and the voters intended for “health care” to mean as the term is used in section 38.

255 P.3d at 902 n.12. If testimony from the legislators who were involved in the enactment of section 38 is not legally relevant in determining the intent of the provision, then the testimony of third parties such as Dr. Anthony and Dr. Hinkle cannot be relevant to that inquiry.

Second, Plaintiffs argue that the chemical abortion statute “plainly regulates health care.” (Pls.’ TRO mem. at 12) To support this argument, they quote phrases from the chemical abortion statute that include the word “medical” and a statutory definition of the phrase “practicing medicine” from Title 33 of the Wyoming statutes. (*Id.*) (citations omitted). This argument fails for the same reason as their first argument – Plaintiffs do not explain how or why getting an abortion maintains or restores the body, mind, or spirit of the pregnant woman from pain, physical disease, or sickness.

2. **Even if this Court concludes that abortion is “health care,” the chemical abortion statute falls outside the scope of section 38 because section 38 does not give patients the right to decide what medical services are legally available.**

Even if this Court concludes that abortion qualifies as “health care,” the chemical abortion statute still does not fall within the scope of section 38(a) because the phrase “health care decisions” in section 38(a) does not give competent adults in Wyoming the right to decide what medical services are available. In the health care process, the state legislature “may control and regulate the practice of medicine and surgery and other health-care professions,” 70 C.J.S. *Physicians and Surgeons* § 9 (April 2023 Update). Through its police powers, the Wyoming Legislature regulates the practice of medicine in Wyoming. *See Taylor v. Wyo. Bd. of Med.*, 930 P.2d 973, 975 (Wyo. 1997) (acknowledging that the

practice of medicine in Wyoming is governed by statute). In doing so, the Legislature decides what medical services are, or are not, available in Wyoming.

Patients, on the other hand, purchase medical services from medical providers. As consumers of medical services, patients have no direct role in determining what medical services legally are available.

The phrase "health care decisions" in section 38(a) does not change the role of the patient in the health care process. To understand why, this Court need look no further than section 38(c). This provision states the Wyoming 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." Wyo. Const. art. 1, § 38(c). Section 38(a) thus unambiguously contemplates that the Legislature will determine what medical services are legally available.

To say otherwise would be to say that the Wyoming Legislature and the voters intended for section 38(a) to allow patients to determine what medical services are available, regardless of whether those services are prohibited by law. Or, stated differently, to say otherwise would be to say that the Wyoming Legislature and the voters intended to delegate a significant aspect of the Legislature's police power to competent adult Wyoming citizens. This result cannot be because section 38(c) unambiguously acknowledges the authority of the Legislature to determine what medical services are legally available.

Such an interpretation also would lead to an impermissibly absurd result. If this Court holds that section 38(a) confers a constitutional right for a pregnant woman to get an

abortion even though the chemical abortion statute prohibits her from doing so, then every competent adult patient in Wyoming would have a constitutional right to receive any medical service the patient wants even if state law prohibits that service.

For example, a person with a medical condition that can be treated with marijuana would be constitutionally authorized to possess and consume marijuana regardless of the state criminal laws prohibiting them from doing so. It is absurd to think that the Wyoming Legislature and the voters intended to give patients such unfettered, unilateral authority to disregard the law. Section 38(a) cannot be interpreted in a manner that leads to such an absurd result. *See Cantrell*, ¶ 11, 133 P.3d at 986-87 (stating that constitutional provisions “should not be read so as to produce absurd results”).

In the April 2023 TRO Order, this Court found the forgoing medical marijuana analogy to be both “misplaced” and “incongruous” because “[i]f a pregnancy must be terminated there are no alternative procedures for terminating a pregnancy other than abortion,” while any condition that can be treated with marijuana likely can be treated with a different medication. (April 2023 TRO Order at ¶ 49). This finding misses the point.

The point of the marijuana analogy has nothing to do with the availability of alternative medical services. Holding that section 38(a) confers a right to get an abortion notwithstanding the chemical abortion statute would give competent adults in Wyoming an unfettered constitutional right to demand and receive a specific type of medical service even if a Wyoming statute prohibited that type of service. The existence of alternative service options would not matter – the patient would have the constitutional right to demand a specific medical service, period. In essence, such an interpretation of section

38(a) deprives section 38(c) of any meaning. Under Wyoming Supreme Court precedent, the Wyoming Constitution “should not be interpreted to render any portion of it meaningless[.]” *Geringer v. Bebout*, 10 P.3d 514, 520-21 (Wyo. 2000).

3. Even if this Court concludes that abortion is “health care,” the chemical abortion statute falls outside the scope of section 38 because the phrase “own health care decisions” only confers the right to make such decisions without interference from the federal government.

Even if this Court concludes that abortion qualifies as “health care,” the chemical abortion statute still does not fall within the scope of section 38(a) because that section was intended to confer the right to make health decisions without interference from the federal government. Section 38(a) confers a constitutional right to each competent adult in Wyoming “to make his or her own health care decisions.” Wyo. Const. art. 1, § 38(a) (emphasis added). At the time section 38(a) was adopted, the common meaning of the word “own” was “for or by oneself; independently of assistance or control[.]” *Merriam-Webster’s Coll. Dictionary* 867 (11th ed. 2012) (alteration added).

To the extent that the word “own” means “by oneself; independently of assistance or control,” section 38(a) confers a right for a pregnant woman to make health care decisions by herself, without anyone else controlling her decision. Section 38(c) limits this right by preserving the right of the Wyoming Legislature to impose reasonable and necessary restrictions on the section 38(a) right. Wyo. Const. art. 1, § 38(c).

Under this interpretation, the chemical abortion statute does not fall within the scope of section 38(a) because the Wyoming Legislature and the voters intended for the word “own” in section 38(a) to mean that a competent adult in Wyoming has the right to make

his or her own health care decisions without interference from the federal government. The Legislature and the voters intended for section 38(a) to protect Wyoming citizens from federal government overreach in the health care arena, particularly with respect to the federal Patient Protection and Affordable Care Act. The legislative and election history of Section 38 and the historical circumstances surrounding its adoption confirm this fact beyond any doubt.⁸

The Senate debate on, and amendments to, SJ0002 provide the relevant legislative history for section 38. The Senate debated SJ0002 during Committee of the Whole on two different days – January 27 and 28, 2011. (Attach. C – 2011 Senate Journal 295-97). The debate in Committee of the Whole shows that several senators had concerns that the introduced version of SJ0002, was too long, had too many words, or was too complicated. (Debate on Senate Joint Resolution No. 0002, 61st Legis. Gen. Sess., Jan. 27, 2011, morning sess.)⁹; (Debate on Senate Joint Resolution No. 0002, 61st Legis. Gen. Sess., Jan. 28, 2011, morning sess.).¹⁰

⁸ This Court may consider this information to confirm the plain meaning of section 38(a). See, e.g., *Powers*, ¶¶ 39-45, 47-55, 318 P.3d 300, 314-16, 317-19 (the Wyoming Supreme Court looked to the *Journals and Debates of the Constitutional Convention of the State of Wyoming* (1889) and to post-ratification legislative actions to confirm the plain meaning of a constitutional provision).

⁹ <https://wvoteg.gov/2011/Audio/senate/s0127am1.mp3>.

¹⁰ <https://wvoteg.gov/2011/Audio/senate/s0128am1.mp3>.

The proposed language that became section 38 (with minor subsequent changes) was introduced by Senator Perkins as an amendment during second reading. (Attach. C – 2011 Senate Journal 297-98). The debate during second reading suggests that the Perkins amendment was intended to give each competent adult in Wyoming the freedom to choose whether to purchase medical services and the freedom to choose how to pay for such services. (See Debate on Senate Joint Resolution No. 0002, 61st Legis. Gen. Sess., Jan. 31, 2011, morning sess.).¹¹

Viewed in its entirety, the debate in the Senate clearly shows that the primary goal of the proposed section 38 was to limit the ability of the federal government to dictate health decisions for Wyoming citizens.¹² At no point in the debate did any senator suggest that section 38 would, or was intended to, confer a constitutional right to abortion such that the Legislature could not prohibit abortion in the future if *Roe* were overturned.¹³

The election history of section 38 shows that the Legislature and the voters intended for that section to protect competent adult citizens in Wyoming from federal overreach in regulating health care matters. To start, the statement endorsed on the

¹¹ <https://wvoteg.gov/2011/Audio/senate/s0131am1.mp3>, at 33:31 to 1:03:33.

¹² <https://wvoteg.gov/2011/Audio/senate/s0127am1.mp3>
<https://wvoteg.gov/2011/Audio/senate/s0128am1.mp3>.
<https://wvoteg.gov/2011/Audio/senate/s0131am1.mp3>.
<https://wvoteg.gov/2011/Audio/senate/s0201am1.mp3>.

¹³ *Id.*

general election ballot for the proposed amendment said nothing about abortion. The endorsement provided as follows:

The adoption of this amendment will provide that the right to make health care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and any health care provider to receive direct payment for services. The amendment permits the legislature to place reasonable and necessary restrictions on health care consistent with the purposes of the Wyoming Constitution and provides that this state shall act to preserve these rights from undue governmental infringement.¹⁴

No voter could read this endorsement and reasonably believe that, in voting to ratify section 38, she was amending the Wyoming Constitution to implicitly confer the right to abortion.

The information voters most likely would have consulted before voting also shows that the voters did not intend for section 38 to implicitly confer a right to abortion under the guise of making a health care decision. In 2012, the Wyoming Secretary of State distributed a "voter's guide."¹⁵ This voter's guide described the proposed section 38 by repeating verbatim the endorsement language from the general election ballot. (Attach. D). It said nothing about abortion and did not say that voting for the proposed section 38 would confer a right to abortion under the Wyoming Constitution.

On the Sunday before the election, a voter guide published in the only statewide newspaper in Wyoming reported that proposed section 38 "would ensure that there will be no requirements concerning health care insurance for Wyoming residents." (Attach. E). This voter guide also described proposed section 38 as "an attempt to remove Wyoming

¹⁴ <https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>, at 2.

¹⁵ <https://sos.wyo.gov/Elections/Docs/2012/2012VoterGuide.pdf>.

from the effects of the Patient Protection Affordable Care Act passed by Congress.” (*Id.*). The voter guide did not say that section 38 would confer a right to abortion or protect the existing right to abortion from being changed by the Wyoming Legislature in the future. It also did not say that section 38 would allow patients to receive medical services that were otherwise prohibited by law in Wyoming.

The historical setting surrounding the enactment of SJ0002 and the approval of section 38 confirms that both the Legislature and the voters intended for the provision to protect Wyoming citizens from federal overreach in regulating health care matters, and particularly from the requirements of the federal Affordable Care Act. During the 2011 legislative session, at least two bills were introduced with the intent of preventing the enforcement of the Affordable Care Act in Wyoming. *See, e.g.*, House Bill No. 00035 (2011) (to create a state health care choice and protection act as an alternative to the Affordable Care Act)¹⁶; House Bill No. 00039 (2011) (to create a fund to pay for litigation against federal health care enactments, primarily the Affordable Care Act).¹⁷ In addition to SJ0002, two other joint resolutions to amend the Wyoming Constitution to address health care freedom were introduced.¹⁸ Although SJ0002 was the only anti-Affordable Care Act legislation to pass during the 2011 legislative session, the fact that other bills and joint

¹⁶ <https://www.wyoleg.gov/Legislation/2011/HB0035>.

¹⁷ <https://www.wyoleg.gov/Legislation/2011/HB0039>.

¹⁸ <https://www.wyoleg.gov/Legislation/2011/SJ0003>;
<https://www.wyoleg.gov/Legislation/2011/HJ0009>.

resolutions were introduced and debated shows the extent to which the Wyoming Legislature generally opposed the Affordable Care Act and sought to protect Wyoming citizens from its reach.

The Wyoming Legislature's opposition to the Affordable Care Act continued during the 2012 legislative session. The Legislature enacted a law to prohibit state agencies and any person representing the State of Wyoming from taking any steps to implement the Affordable Care Act at the state level until the U.S. Supreme Court decided a challenge to the constitutionality of the Affordable Care Act in *Florida v. U.S. Department of Health and Human Services* (Docket Number 11-400).¹⁹ 2012 Wyo. Sess. Laws 241-42.

At the time that section 38 was ratified, the public sentiment in Wyoming was largely opposed the Affordable Care Act. A poll conducted by the University of Wyoming showed that 66% of the individuals surveyed disapproved of the Affordable Care Act.²⁰ The pollster attributed the high rate of disapproval to "general attitudes concerning the federal government[.]"²¹

News articles published before the 2012 election reported that Section 38 was intended to give Wyoming citizens an alternative to the federal Affordable Care Act. In the weeks before the 2012 general election, one national news magazine characterized the

¹⁹ The State of Wyoming was a petitioner along with a number of other states in the *Florida* case. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

²⁰ <https://www.uwyo.edu/uwvnews/2012/11/wyoming-residents-have-mixed-views-on-health-care-changes.html>.

²¹ *Id.*

proposed section 38 as an attempt “to let individuals sidestep” the Affordable Care Act.²² Under a headline reading “Wyoming voters will get a say on Obamacare mandate,” the newspaper in Cheyenne reported that proposed section 38 was “designed to block” the insurance mandate in the Affordable Care Act. (Attach. F).

The structure of section 38 also confirms the view that the Wyoming Legislature and the voters intended for it to counteract the Affordable Care Act. Section 38(b) confers the constitutionally protected right for individuals to make “direct payment for health care without imposition of fines or penalties for doing so.” Wyo. Const. art. 1, § 38(b). Health care providers generally accept direct payment for services rendered, so this subsection only makes sense when viewed in light of the individual mandate in the Affordable Care Act. “[T]he individual mandate requires most Americans to maintain ‘minimum essential’ health insurance coverage.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 539 (2012). By creating a state constitutional right to make direct payment for health care services, the Legislature and the voters intended to give Wyoming citizens an alternative to the individual mandate.

Section 38(d) dictates that the State “shall act to preserve” the rights conferred in section 38 “from undue government infringement.” Wyo. Const. art 1, § 38(d). In this phrase, the word “government” necessarily means the federal government. It makes no sense to direct the State of Wyoming to take action to preserve the rights conferred in section 38 from undue infringement by the State of Wyoming. Section 38(d) thus directs

²² <https://swampland.time.com/2012/10/31/ballot-initiative-of-the-day-will-wyoming-resist-obamacare/>

the State to take action to preserve the rights conferred in section 38 from undue infringement by the federal government.

This history regarding section 38 confirms that the Wyoming Legislature and the voters intended for the phrase "the right to make his or her own health care decisions" to give competent adults in Wyoming a means to push back against federal government overreach on health care matters. Consistent with this view, the leading scholar on the Wyoming Constitution has opined that section 38 "is perhaps best described as a 'message' amendment, expressing the state's displeasure with the controversial federal Affordable Care Act[.]" Robert B. Keiter, *The Wyoming State Constitution* 110 (2d ed. 2017).

4. Even if this Court concludes that abortion is "health care," the chemical abortion statute falls outside the scope of section 38 because a pregnant woman's decision to get an abortion is not her "own" health care decision.

Even if this Court concludes that abortion qualifies as "health care," the chemical abortion statute still does not fall within the scope of section 38(a) because a pregnant woman's decision to get an abortion is not her "own" decision for purposes of section 38(a). To the extent that the word "own" means "for ... oneself; independently of assistance, or control," section 38(a) confers a right for a pregnant woman to make decisions that affect her health care provided those decisions do not also affect others. If a pregnant woman makes a health care decision that affects both her and someone else, then the decision is not just for herself.

Under this interpretation, the chemical abortion statute does not fall within the scope of section 38(a) because the decision to have an abortion affects more than just the pregnant

woman. The State has a legitimate interest in ensuring “respect for and preservation of prenatal life at all stages of development[.]” *Dobbs*, 142 S.Ct. at 2284 (alteration added); *see also* Wyo. Stat. Ann. § 35-6-121(a)(vi). And, under the Life Act, an unborn baby also has legally protected rights. *See generally* Wyo. Stat. Ann. § 35-6-121. An abortion ends the life of the unborn baby. *See* Wyo. Stat. Ann. § 35-6-122(a)(i) (defining “abortion”); Wyo. Stat. Ann. § 35-6-122(a)(iv) (defining “unborn baby”). Thus, the decision to have an abortion affects the State’s interests in preserving prenatal life and the unborn baby’s legally protected rights.

In the final analysis, the chemical abortion statute does not fall within the scope of section 38(a). As a result, Plaintiffs have not clearly shown that the chemical abortion statute likely is facially unconstitutional.

B. If this Court concludes that the right to make health care decisions conferred by section 38(a) includes the right to get an abortion, Plaintiffs have not clearly shown that the chemical abortion statute impermissibly restricts that right in all circumstances.

If this Court concludes that the right to make health care decisions under section 38(a) includes the right for a pregnant woman to get an abortion, the chemical abortion statute does not impermissibly restrict that right in all circumstances. Asserting that a statute is unconstitutional on its face “is the most difficult challenge to mount successfully” because the plaintiff “must establish that no set of circumstances exists under which the [statute] would be valid.” *Dir. of Off. of State Lands & Invs.*, ¶ 32, 70 P.3d at 252 (citation and internal quotation marks omitted) (alteration added). Or, in other words, the plaintiff “must demonstrate that the statute always operates unconstitutionally.” *Wilson v. Andrews*,

10 S.W.3d 663, 670 (Tex. 1999) (emphasis added). If the challenged “statute is constitutional in at least one scenario, the facial challenge fails.” *Comm. on Ways & Means, U.S. House of Representatives v. U.S. Dep’t of the Treasury*, 45 F.4th 324, 340 (D.C. Cir. 2022) (cleaned up); see also *In re Gwenevere T.*, 797 N.W.2d 854, 868 n.16 (Wisc. 2011) (explaining that “when there is at least one interpretation and application of a statute that is constitutional, the statute is constitutional on its face”).

Even if this Court concludes that the right to make health care decisions includes a right to get an abortion, the chemical abortion statute does not always infringe upon that right because a pregnant woman’s decision to get an abortion is not always a “health care decision” for purposes of section 38(a). Without question, when a medical professional performs or causes an abortion, the abortion involves medical services to the extent that it requires surgery or the prescribing and administering of medication. But a pregnant woman’s decision to get an abortion is not always a health care decision because the decision is not always based on health considerations. To be a “health care decision” for purposes of section 38(a), the decision to get an abortion must be intended to restore the body, mind, or spirit of the pregnant woman from pain, physical disease, or sickness. Some decisions to get an abortion qualify under this legal standard, but not all of them do.

This Court acknowledged as much in the April 2023 TRO Order when it said that the Life Act burdens pregnant woman with respect to, among other things, their families, their careers, and their finances. (April 2023 TRO Order at ¶ 50). If a pregnant woman in good health decides to get an abortion based solely upon family, career, or financial considerations, then that decision is not a “health care decision” for purposes of section

38(a) because the abortion would not be necessary to maintain or restore the body, mind, or spirit of the pregnant woman from pain, physical disease, or sickness.

And, even if the right to make health care decisions includes the right to get an abortion, the chemical abortion statute does not infringe upon that right when the life or health of the pregnant woman exception in Wyo. Stat. Ann. § 35-6-120(b)(iii) applies. The prohibition on chemical abortions in § 35-6-120(a) does not apply when, “according to appropriate medical judgment,” the pregnancy puts the pregnant woman in “imminent peril that substantially endangers her life or health[.]” Wyo. Stat. Ann. § 35-6-120(b)(iii). Thus, if this Court concludes that the right to make health care decisions includes a right to get an abortion, then the chemical abortion statute does not infringe upon a pregnant woman’s right to make health care decisions in a scenario where her physician, using appropriate medical judgment, determines that the pregnancy will substantially endanger the life or health of the pregnant woman if the pregnancy is not ended. In that scenario, the prohibition in § 35-6-120(a) would not apply.

C. If this Court concludes that the right to make health care decisions includes the right to get an abortion, the chemical abortion statute imposes constitutionally permissible restrictions on that right.

Plaintiffs argue that the chemical abortion statute does not satisfy the “reasonable and necessary restrictions” test in section 38(c). (Pls.’ TRO mem. at 13-16). Their failure to show that the chemical abortion statute always impermissibly restricts a pregnant woman’s right to make health care decisions under section 38(a) renders their section 38(c) argument moot. However, if this Court considers their argument, it will find that Plaintiffs

have not shown that the restrictions on abortion in the chemical abortion statute are unreasonable or unnecessary.

Section 38 has its own constitutionally imposed standard to be used to determine whether a statute impermissibly infringes upon the right to make health care decisions. Section 38(c) provides that the Wyoming 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.” Wyo. Const. art. 1, § 38(c). As a result, neither the rational basis test nor the strict scrutiny test apply in this Court’s assessment of whether the chemical abortion statute violates section 38(a).

The phrase “reasonable and necessary restrictions” in section 38(c) mirrors the description of the permissible exercise of police powers of the State in cases such as *Zancanelli* and *Newport International University*, where the Wyoming Supreme Court explained that the State “has the authority to enact such laws as reasonably are deemed to be necessary to promote the health, safety, and general welfare of its people.” *Zancanelli v. Cent. Coal & Coke Co.*, 173 P. 981, 985 (Wyo. 1918); *Newport Int’l Univ., Inc. v. State, Dep’t of Educ.*, 2008 WY 72, ¶ 39, 186 P.3d 382, 391 (Wyo. 2008). Thus, section 38(c) simply makes the long established test for the State’s permissible exercise of its police powers the test for assessing the constitutionality of a statute alleged to impermissibly infringe upon the right to make health care decisions in section 38(a).

In this regard, the section 38(c) test is functionally equivalent to the rational basis test. The phrase “reasonable and necessary” in section 38(c) and the phrase “rationally

related” in the rational basis test require a substantially similar nexus between the restrictions imposed by the police power statute and the objective(s) of the statute. And the objectives requirement in section 38(c) – protection of the health and general welfare of the people of Wyoming or the accomplishment of some other purpose of the Wyoming Constitution – is functionally the same as the “legitimate state objective” requirement in the rational basis test.²³

In terms of assessing the reasonableness and necessity of legislation under section 38(c), this Court should afford great deference to the Wyoming Legislature as the “sole judge of the policy, wisdom, and expediency of statutes,” *State v. W.S. Buck Mercantile Co.*, 264 P. 1023, 1025 (Wyo. 1928). The Legislature’s authority to enact laws it deems to be necessary to promote the health, safety, and general welfare of the people of Wyoming “carries with it a wide range of judgment and discretion as to what matters are of sufficiently general importance to be subjected to state regulation and administration.” *Zancanelli*, 173 P. at 985. As the branch of state government most directly answerable to the people, the Legislature should be given wide latitude to make the type of policy decision embodied in the chemical abortion statute. This Court, therefore, should afford great deference to the policy choice reflected in those statutes, both in terms of reasonableness and necessity.

²³ The section 38(c) test is not equivalent to the strict scrutiny test. Although both tests use the term “necessary,” section 38(c) permits the exercise of legislative lawmaking authority for two specific purposes instead of requiring a “compelling state interest” as the purpose. Also, section 38(c) does not require that restrictions on the right to make health care decisions be the least onerous alternative to achieve the State’s objective.

The chemical abortion statute reasonably accomplishes the purposes identified in section 38(c). The statute protects the health and general welfare of the people in Wyoming and reasonably balances the interests of pregnant women with the interests of the State. The exception in § 35-6-120(b)(iii) furthers the interests of pregnant women because it allows a chemical abortion to be performed on a pregnant woman to preserve her life or health or in a situation where she did not consent to the pregnancy due to sexual assault or incest. The general ban on chemical abortions in the statute furthers the State's interest in preserving "prenatal life at all stages of development[.]" *Dobbs*, 142 S.Ct. at 2284; *see also* Wyo. Stat. Ann. § 35-6-121(a)(vi). The chemical abortion statute also accomplishes the purpose of protecting the legal rights of the unborn baby. *See generally* Wyo. Stat. Ann. § 35-6-121. For these reasons, the chemical abortion statute imposes reasonable and necessary restrictions on the right to make health care decisions conferred by section 38(a).

Plaintiffs offer several reasons why the chemical abortion statute does not satisfy the "reasonable and necessary restrictions" test in section 38(c). (Pls.' TRO mem. at 13-16). However, their section 38(c) argument suffers from several legal infirmities.

First and foremost, Plaintiffs have not provided this Court with a cogent legal analysis to interpret or construe the meaning of the "reasonable and necessary restrictions" test in section 38(c). Their analysis amounts to nothing more than a listing of the many reasons why they disagree with the policy embodied in the chemical abortion statute. Given the complete absence of legal argument on the issue, this Court should not consider Plaintiffs' section 38(c) argument. *Cf. Pier v. State*, 2019 WY 3, ¶ 26, 432 P.3d 890, 898

(Wyo. 2019) (stating that the Wyoming Supreme Court will not consider legal arguments unsupported by cogent argument or citation to pertinent legal authority).

Second, Plaintiffs assert that the chemical abortion statute is unreasonable because it “creates the very real prospect that ... Wyoming women will not be able to obtain abortions that are otherwise legal.” (Pls.’ TRO mem. at 13). But they do not cite legal authority to support this statement or explain how or why it is true. They also do not explain how abortions can otherwise be legal if the chemical abortion statute prohibits abortion. This Court, therefore, should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

Third, in an effort to show that the chemical abortion statute is unreasonable because it does not protect the life of an unborn baby, Plaintiffs incorrectly assert that the statute “does not purport to ban any abortions[.]” (Pls.’ TRO mem. at 14). They cite no legal authority to support this argument and do not explain how or why this statement is true. As a result, this Court should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

Fourth, Plaintiffs offer two arguments in an attempt to show that the chemical abortion statute is unreasonable because it does not protect the health of women. (Pls.’ TRO mem. at 14-15). They say that the statute does not permit chemical abortions when a mental or emotional condition substantially endangers the life of the woman, but they do not explain why this point is legally relevant. (Pls.’ TRO mem. at 14). Plaintiffs also point out that “the statute does not include an exception for ectopic and molar pregnancies, which are potentially life-threatening to women.” (*Id.*). Yet they do not explain how or why the exception in § 35-6-120(b)(iii) would not apply to a life-threatening ectopic and molar

pregnancy. (Pls.' TRO mem. at 14-15). Accordingly, this Court should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

Fifth, Plaintiffs contend that the chemical abortion statute is unreasonable because it "undermines medical ethics[.]" (Pls.' TRO mem. at 15). To this end, they argue that "the statute will force physicians to perform surgical abortions when a medical abortion is a more appropriate procedure." (Pls.' TRO mem. at 15) (citing Dr. Anthony Aff. at ¶ 19).²⁴ This argument fails because, to the extent that Plaintiffs are referring to paragraph 18 in Dr. Anthony's affidavit, they provide only a conclusory statement by Dr. Anthony. Plaintiffs have not explained how or why the chemical abortion statute will force physicians to perform surgical abortions instead of chemical abortions. Conclusory statements in an affidavit are not sufficient to show a likelihood of success on the merits. *See Lane v. Buckley*, 643 F.App'x: 686, 689 (10th Cir. 2016) (noting that "a district court should be wary of issuing an injunction based solely upon allegations and conclusory affidavits") (citation omitted).

Sixth, Plaintiffs assert that the chemical abortion statute is unreasonable because, if a pregnant woman has a legal right to have an abortion, the statute "would dictate that she must undergo a surgical abortion[.]" (Pls.' TRO mem. at 15). However, they do not explain how or why this statement is true. They also do not explain how or why the exception in § 35-6-120(b)(iii) would not apply if the pregnant woman has a legal right to get an

²⁴ Paragraph 19 in Dr. Anthony's affidavit says nothing about physicians being forced to perform surgical abortions. (See Pls.' TRO mem., Ex. 5 at ¶ 19).

abortion. This Court, therefore, should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

And, finally, Plaintiffs assert that the chemical abortion statute is unreasonable because it “will interfere with a wide variety of health care” but do not explain how or why their concerns are legally relevant. They also do not explain how or why the exceptions in the chemical abortion statute do not apply to the concerns they have identified. As a result, this Court should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

Ultimately, Plaintiffs’ section 38(c) argument is doomed because they cannot show that the chemical abortion statute impermissibly infringes upon the right conferred by section 38(a) in all circumstances. Their argument is equally doomed by the complete absence of a legal argument explaining how the “reasonable and necessary restrictions” test in section 38(c) should be interpreted and applied. As a result, even if this Court concludes that the right to make health decisions conferred by section 38(a) includes a right to get an abortion, Plaintiffs have not shown that the restrictions imposed by the chemical abortion statute are unreasonable and unnecessary.

II. Plaintiffs have not clearly shown that the chemical abortion statute may possibly cause irreparable injury to them.

This Court does not need to address the irreparable injury prong. Under this prong, this Court assesses possible injuries that may result from the enforcement of a statute that ultimately may be declared unconstitutional. In making this assessment, this Court assumes the challenged statute may be unconstitutional because the probable success prong has been satisfied. Plaintiffs have not clearly shown that they likely will succeed on the merits of

their section 38 claim, so this Court has no reason to address possible irreparable injuries that may result if the chemical abortion statute is allowed to take effect.

If this Court addresses the merits of the irreparable injury prong, however, it will find that Plaintiffs also have not shown that the chemical abortion statute may cause irreparable injury to any of them. To satisfy the irreparable injury prong, that party must show that "the potential harm is irreparable and there is no adequate remedy at law to compensate for the harm." *In re Kite Ranch*, ¶ 22, 181 P.3d at 926. "An injury is irreparable where it is of a peculiar nature, so that compensation in money cannot atone for it." *CBM Geosolutions*, ¶ 10, 215 P.3d at 1058 (citation omitted).

Plaintiffs assert that allowing the chemical abortion statute to take effect will cause five distinct irreparable injuries. A close look at their arguments reveals that each one lacks merit as a matter of law.

First, Plaintiffs argue they do not need to show the likelihood of irreparable injury because the chemical abortion statute places their constitutional rights under Section 38 "in jeopardy." (Pls.' TRO mem. at 6). This argument fails because Plaintiffs have not shown that the chemical abortion statute violates section 38(a) in all circumstances.

Second, Plaintiffs contend that the chemical abortion statute will cause irreparable injury to "Ms. Johnson, Ms. Dow and similarly situated Wyomingites" by stripping "them of the right to make their own healthcare decisions in future pregnancies."²⁵ (Pls.' TRO mem. at 6). This argument is legally flawed in several respects:

²⁵ The party seeking a temporary injunction cannot rely on irreparable injury to a non-party to satisfy the irreparable injury requirement. See *Weiss*, 434 P.2d at 762 (The legal standard

To the extent that Ms. Johnson and Ms. Dow intend to become pregnant in the future while living in Wyoming, the possibility of the chemical abortion statute applying to them is too remote and speculative to qualify as an irreparable injury under the temporary injunction test. *Cf. Getty Images News Servs. Corp. v. Dep't of Def.*, 193 F.Supp.2d 112, 122 (D.D.C. 2002) (stating that “[i]t is axiomatic that speculative injury will not support emergency injunctive relief, and that the threat of irreparable injury must be real and imminent”). Without specifying a more definitive time frame that shows they may become pregnant during the pendency of this case, Ms. Johnson and Ms. Dow have not established that the chemical abortion statute may possibly cause them irreparable injury.

Citing the April 2023 TRO Order as legal authority, Plaintiffs argue that the chemical abortion statute will prevent Ms. Johnson and Ms. Dow “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.” (Pls.’ TRO mem. at 7) (citing April 2023 TRO Order at ¶ 50). They suggest that, in paragraph 50 of the TRO Order, this Court concluded that the listed burdens are irreparable injuries. It did not. This Court’s irreparable injury analysis did not start until paragraph 54 in the April 2023 TRO Order. This argument lacks legal cogency and therefore should be disregarded. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

for granting a temporary injunction is “a clear showing of probable success and possible irreparable injury to the plaintiff[.]” (emphasis added). As a result, Plaintiffs’ “similarly situated Wyomingites” argument fails as a matter of law.

Plaintiffs also note that "abortion medication is a necessary component of some surgical abortions." (Pls.' TRO mem. at 7) (citations omitted). They do not explain how or why this fact, if true, causes irreparable injury to either Ms. Johnson or Ms. Dow. Accordingly, this Court should disregard this argument. *Cf. Pier*, ¶ 26, 432 P.3d at 898.

Third, Plaintiffs contend that the chemical abortion statute irreparably injures Dr. Anthony and Dr. Hinkle because it poses a risk of criminal prosecution and permanent loss of their medical license. (Pls.' TRO mem. at 8). They specifically argue that the "[l]oss of customers" and threat to the "viability" of their respective businesses that would result from the loss of their professional license constitutes irreparable injury. (*Id.*) (quoting *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 304 F.Supp.2d 1278, 1287 (D. Wyo. 2004)).

This argument fails because Dr. Anthony and Dr. Hinkle lack standing to challenge the constitutionality of the chemical abortion statute under section 38. In Wyoming, "the constitutionality of a statute may only be questioned by a party whose rights are affected thereby." *Cathcart v. Meyer*, 2004 WY 49, ¶ 37, 88 P.3d 1050, 1064 (Wyo. 2004) (cleaned up). "No one is entitled to present a claim that a particular statute is unconstitutional as to other persons or classes of persons ... he must demonstrate injury to his own rights." *Budd v. Bishop*, 543 P.2d 368, 371-72 (Wyo. 1975). Thus, Dr. Anthony and Dr. Hinkle each must show that the chemical abortion statute causes injury to her own constitutionally protected rights, not the constitutional rights of any of the other Plaintiffs. They have not done so here, so they lack standing and therefore are not legally entitled to temporary injunctive relief.

Even if Dr. Anthony and Dr. Hinkle had standing to challenge the constitutionality of the chemical abortion statute under section 38, Plaintiffs have not established that Dr. Anthony's and Dr. Hinkle's businesses may fail if they do not perform chemical abortions in Wyoming. Plaintiffs cite to paragraphs 7 through 13 in Dr. Hinkle's affidavit as evidence in support of this argument. In those paragraphs, Dr. Hinkle says nothing about the possibility that her business might fail if the chemical abortion statute takes effect.

Plaintiffs cite paragraphs 10, 14, 15, 18, and 37 in Dr. Anthony's affidavit as evidence in support of the business failure argument. In paragraphs 10, 14, 15, and 18, she says nothing about the possibility that her business might fail if the chemical abortion statute takes effect. In paragraph 37, Dr. Anthony says that the chemical abortion statute will cause her to stop providing chemical abortions in Wyoming. (Pls.' TRO mem. Ex. 5 at ¶ 37). But she does not say that her business might fail if she stops providing chemical abortions in Wyoming.

Fourth, Plaintiffs contend that the chemical abortion statute will cause the same irreparable injuries to Circle of Hope and Chelsea Fund that are caused to them by the Life Act. (Pls.' TRO mem. at 8) (citing April 2023 TRO Order at ¶ 61). This argument fails because Circle of Hope and Chelsea Fund lack standing to challenge the constitutionality of the chemical abortion statute and therefore are not entitled to any type of injunctive relief. Circle of Hope and Chelsea Fund each must show that the chemical abortion statute causes injury to its own constitutionally protected rights, not the constitutional rights of any of the other Plaintiffs. See *Cathcart*, ¶ 37; 88 P.3d at 1064; *Budd*, 543 P.2d at 371-72.

They have not done so here, so they lack standing and therefore are not legally entitled to temporary injunctive relief.

Fifth, Plaintiffs contend that "Wyomingites at large will be harmed" by the chemical abortion statute. (Pls.' TRP mem. at 10). Specifically, they argue that the statute will "deprive Wyomingites of their ability to make healthcare decisions, and private family planning decisions, during the roughly 9 months of their pregnancies." (*Id.*). The party seeking a temporary injunction cannot rely on irreparable injury to a non-party to satisfy the irreparable injury requirement. See *Weiss*, 434 P.2d at 762. As a result, this argument fails as a matter of law.

Plaintiffs, either individually or collectively, have not established that the chemical abortion statute has or will cause them to suffer irreparable injury if the statute takes effect. As a result, they are not entitled to any type of temporary injunctive relief.

III. The public interest and the balance of the equities weigh in favor of denying the request for a TRO.

Plaintiffs argue that the public interest and the balance of the equities "weigh decisively" in favor of this Court issuing a TRO. (Pls.' TRO mem. at 16). The Wyoming Supreme Court has not adopted a public interest/balance of the equities requirement for temporary injunctions. However, to the extent that the equities are relevant, they weigh in favor of allowing the chemical abortion statute to take effect.

The public interest favors allowing the chemical abortion statute to take effect because it represents a lawful exercise of legislative power. The Wyoming Constitution

is not a grant but a limitation upon legislative power. Consequently, the [Wyoming] legislature may enact any law not expressly or inferentially

prohibited by the constitution. This plenary power of the legislature is the rule for all purposes of civil government, and a prohibition to exercise a particular power is an exception.

Cathcart, ¶ 45, 88 P.3d at 1067 (internal citations omitted) (alteration added).

No constitutional provision, state or federal, confers a right to abortion in Wyoming. The Wyoming Constitution does not explicitly confer a right to abortion and Plaintiffs have not shown that it implicitly confers such a right. In addition, the U.S. Constitution “does not confer a right to abortion.” *Dobbs*, 142 S. Ct. at 2279. As a result, the Wyoming Legislature properly exercised its plenary lawmaking authority in enacting the chemical abortion statute.

When viewed through the lens of Wyoming history and tradition, abortion has always been prohibited and a crime in Wyoming (subject to limited exceptions) when the policy choice has been left solely to the discretion of State policymakers. The Wyoming Legislature is the policy-making branch of state government. *Starrett v. State*, 2012 WY 133, ¶ 12, 286 P.3d 1033, 1038 (Wyo. 2012). The laws enacted by the Legislature thus reflect the public policy of the State of Wyoming.

Since the first year that Wyoming was a territory, state law has prohibited and criminalized abortion (subject to exceptions) to the extent permitted by federal law. Before *Roe*, abortion (subject to one exception) was a crime for the first 104 years that Wyoming existed as either a territory or a state. After *Roe* was overruled, the Wyoming Legislature enacted the chemical abortion statute (and the Life Act) to once again prohibit and criminalize abortion (subject to specified exceptions). The chemical abortion statute is

consistent with the long-standing public policy of this state, so the public interest and the balance of the equities factor weighs in favor of permitting it to take effect.

Plaintiffs make two public interest/balance of the equities arguments. (Pls.' TRO mem. at 16). Neither has merit.

Plaintiffs first argue that the public interest weighs against "enforcing a law that is likely constitutionally infirm." (Pls.' TRO mem. at 16) (citation omitted). This argument assumes they have made the required showing on the probable success prong. For the reasons explained above, they have not.

Second, Plaintiffs assert that "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." (Pls.' TRO mem. at 16). This assertion ignores the fact that a state suffers "ongoing irreparable harm" whenever a court enjoins it "from effectuating statutes enacted by representatives of its people[.]" *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Thus, "the public interest necessarily weighs against enjoining a duly enacted statute[.]" *Priorities USA v. Nessel*, 860 F.App'x 419, 423 (6th Cir. 2021). But, that being said, "the public's true interest lies in the correct application of the law." *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022).

As explained above, Plaintiffs cannot show that the chemical abortion statute impermissibly infringes upon the right conferred by section 38(a), so the public interest weighs heavily in favor of allowing the duly enacted chemical abortion statute to take effect.

IV. This Court should not require a bond if a TRO is issued.

If this Court issues the requested TRO, the State Defendants do not believe that a bond should be required.

Conclusion

For the foregoing reasons, this Court should deny Plaintiffs' motion for a TRO in its entirety.

DATED this 25th day of May 2023.



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*Attorney for Defendants State of
Wyoming, Governor Gordon, Attorney
General Hill*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2023, a true copy of the foregoing was served via email, and mailed, postage prepaid, to the following:

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ORIGINAL SENATE
FILE NO. SE0109

ENGROSSED

ENROLLED ACT NO. 93, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

AN ACT relating to abortions; prohibiting chemical abortions as specified; providing criminal penalties; providing definitions; specifying exceptions; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-6-120 is created to read:

35-6-120. Chemical abortions prohibited; exceptions; penalty.

(a) Notwithstanding any other provision of law, 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;

(b) The prohibition in subsection (a) shall not apply to:

(i) The sale, use, prescription or administration of any contraceptive agent administered before conception or before pregnancy can be confirmed through conventional medical testing;

(ii) The treatment of a natural miscarriage according to currently accepted medical guidelines;

(iii) Treatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. As used in this paragraph, "imminent peril" means only a physical condition and shall not include any psychological



STATE OF WYOMING
Secretary of State

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Chuck Gray
Secretary of State

By:

Anthony Valdez

Date:

5-15-2023

ENROLLED ACT NO. 93, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

or emotional conditions. No medical treatment shall form the basis for an exception under this paragraph if it is based on a claim or diagnosis that the pregnant woman will engage in conduct which she intends to result in her death or other self-harm.

(c) Except as otherwise provided in this section, any physician or other person who violates subsection (a) of this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine not to exceed nine thousand dollars (\$9,000.00), or both.

(d) A woman upon whom a chemical abortion is performed or attempted shall not be criminally prosecuted pursuant to subsection (c) of this section.

Section 2. W.S. 35-6-101(a)(vi) and (xii) is amended to read:

35-6-101. Definitions.

(a) As used in the act, unless the context otherwise requires:

(vi) "Pregnant" or "pregnancy" means that condition of a woman who has a human embryo or fetus within her as the result of conception;

(xii) "This act" means W.S. 35-6-101 through ~~35-6-119~~ 35-6-120.



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David J. Gray
Secretary of State

By: *Cynthia Velch*

Date: *5-15-2023*

ORIGINAL SENATE
FILE NO. SF0109

ENGROSSED

ENROLLED ACT NO. 93, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

Section 3. This act is effective July 1, 2023.

(END)

Allet Sam
Speaker of the House

Don Kinskey
President of the Senate

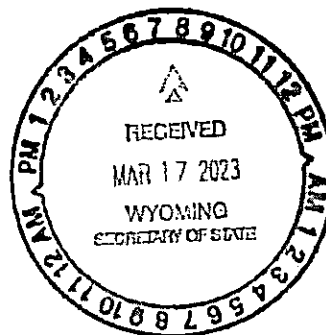
Mark Ponder
Governor

TIME APPROVED: 16:45

DATE APPROVED: 17 March 2023

I hereby certify that this act originated in the Senate.

Ellen Thompson
Chief Clerk





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Secretary of State

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Chuck Gray

Secretary of State

By:

Christine Valdez

Date:

5-15-2025

ORIGINAL HOUSE
BILL NO. HB0152

ENGROSSED

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

AN ACT relating to abortion; creating the Life is a Human Right Act; providing findings and purposes; prohibiting abortion; specifying criminal and regulatory penalties and civil remedies; providing exceptions; specifying applicability and severability; making conforming amendments; renumbering current provisions on abortion; repealing and removing obsolete or conflicting provisions; requiring rulemaking; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-6-120 through 35-6-128 are created to read:

35-6-120. Short title.

This act shall be known and may be cited as the "Life is a Human Right Act."

35-6-121. Findings and purposes.

(a) The legislature finds that:

(i) As a consequence of an unborn baby being a member of the species homo sapiens from conception, the unborn baby is a member of the human race under article 1, section 2 of the Wyoming constitution;

(ii) The legislature acknowledges that all members of the human race are created equal and are endowed by their creator with certain unalienable rights, the foremost of which is the right to life;

(iii) This act promotes and furthers article 1, section 6 of the Wyoming constitution, which guarantees



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By:

Christina Valdez

Date:

3-21-23

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

that no person may be deprived of life or liberty without due process of law;

(iv) Regarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care. Instead of being health care, abortion is the intentional termination of the life of an unborn baby. It is within the authority of the state of Wyoming to determine reasonable and necessary restrictions upon abortion, including its prohibition. In accordance with Article 1, Section 38(c) of the Wyoming constitution, the legislature determines that the health and general welfare of the people requires the prohibition of abortion as defined in this act;

(v) The legislature, in the exercise of its constitutional duties and powers, has a fundamental duty to provide equal protection for all human lives, including unborn babies from conception;

(vi) Wyoming's "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

35-6-122. Definitions.

(a) As used in this act:



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Cynthia Valby

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(i) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one (1) or more unborn babies in a multifetal pregnancy, with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn baby. "Abortion" shall not include any use, prescription or means specified in this paragraph if the use, prescription or means are done with the intent to:

(A) Save the life or preserve the health of the unborn baby;

(B) Remove a dead unborn baby caused by spontaneous abortion or intrauterine fetal demise;

(C) Treat a woman for an ectopic pregnancy;

or

(D) Treat a woman for cancer or another disease that requires medical treatment which treatment may be fatal or harmful to the unborn baby.

(ii) "Pregnant" means the human female reproductive condition of having a living unborn baby or human being within a human female's body throughout the entire embryonic and fetal stages of the unborn human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth;

(iii) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the



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Richard Gray
Secretary of State

By: *Christine Valley*
Date: 3-21-23

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treatment possibilities with respect to the medical conditions involved;

(iv) "Unborn baby" or "unborn human being" means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages from fertilization to full gestation and childbirth;

(v) "Ectopic pregnancy" means a pregnancy that occurs when a fertilized egg implants and grows outside the main cavity of the uterus;

(vi) "Lethal fetal anomaly" means a fetal condition diagnosed before birth and if the pregnancy results in a live birth there is a substantial likelihood of death of the child within hours of the child's birth;

(vii) "Molar pregnancy" means the development of a tumor or cysts that may or may not include placental tissue from trophoblastic cells after fertilization of an egg that results in spontaneous abortion or intrauterine fetal demise;

(viii) "This act" means W.S. 35-6-120 through 35-6-138.

35-6-123. Abortion prohibited.

(a) Except as provided in W.S. 35-6-124, no person shall knowingly:

(i) Administer to, prescribe for or sell to any pregnant woman any medicine, drug or other substance with the specific intent of causing or abetting an abortion; or



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(ii) Use or employ any instrument, device, means or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

35-6-124. Exceptions to abortion prohibition; applicability.

(a) It shall not be a violation of W.S. 35-6-123 for a licensed physician to:

(i) Perform a pre-viability separation procedure necessary in the physician's reasonable medical judgment to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition or the serious and permanent impairment of a life-sustaining organ of a pregnant woman, provided that no separation procedure shall be deemed necessary under this paragraph unless the physician makes all reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of the unborn baby in a manner consistent with reasonable medical judgment;

(ii) Provide medical treatment to a pregnant woman that results in the accidental or unintentional injury to, or the death of, an unborn baby;

(iii) Perform an abortion on a woman when the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. Prior to the performance of any abortion under this paragraph the woman, or the woman's parent or guardian if the woman is a minor or subject to a guardianship, shall report the act of incest or sexual assault to a law enforcement agency and a copy of the report shall be provided to the physician; or



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(iv) Perform an abortion on a woman when in the physician's reasonable medical judgment, there is a substantial likelihood that the unborn baby has a lethal fetal anomaly or the pregnancy is determined to be a molar pregnancy.

(b) Nothing in this act shall be construed to prohibit the use, sale, prescription or administration of a contraceptive measure, drug, chemical or device if the contraceptive measure, drug, chemical or device is used, sold, prescribed or administered in accordance with manufacturer instructions and is not used, sold, prescribed or administered with the specific intent to cause or induce an abortion.

35-6-125. Penalties and remedies.

(a) Any person who violates W.S. 35-6-123 is guilty of a felony punishable by a fine not to exceed twenty thousand dollars (\$20,000.00), imprisonment for not more than five (5) years, or both.

(b) Nothing in this act shall be construed to subject a pregnant woman upon whom any abortion is performed or attempted to any criminal penalty under this act.

35-6-126. Professional sanctions; civil penalties.

(a) In addition to any other penalties available under law, a physician or any other professionally licensed person who intentionally, knowingly or recklessly violates W.S. 35-6-123 commits an act of unprofessional conduct, and the physician's or person's license to practice in Wyoming shall be immediately revoked by the state board of medicine after due process in accordance with the rules and



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procedures of the state board of medicine. Any person may file a complaint against a physician or other licensed person under this section, or the state board of medicine may on its own accord initiate a complaint against a physician or other licensed person. The state board of medicine may assess or impose the costs of any investigation, fines not to exceed five thousand dollars (\$5,000.00) and any other disciplinary actions authorized by law that the board deems appropriate.

(b) No civil penalty shall be assessed against a pregnant woman upon whom an abortion is performed or attempted for a violation of this act.

35-6-127. Civil remedies.

(a) In addition to any remedies available under law, failure to comply with this act shall provide the basis for a civil action as provided by this section.

(b) Any pregnant woman upon whom an abortion has been performed, induced or coerced in violation of this act may maintain an action against the person or persons who violated this act for actual and punitive damages. In addition to all other damages and separate and distinct from all damages, a plaintiff prevailing in an action under this section shall be entitled to statutory damages of ten thousand dollars (\$10,000.00) for each violation of this act from each defendant for each violation.

(c) A separate and distinct cause of action for injunctive relief against any person who has violated this act to enjoin further violations of this act, may be maintained by any of the following:



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(i) The woman upon whom an abortion was performed or induced in violation of this act;

(ii) The parent or guardian of the pregnant woman if the woman had not attained eighteen (18) years of age at the time of the abortion or if the woman died as a result of the abortion;

(iii) A district attorney with proper jurisdiction;

(iv) The attorney general.

(d) If judgment is rendered in favor of the plaintiff in a civil action authorized by this section, the plaintiff shall be entitled to receive reasonable costs and attorney fees from the defendant.

35-6-128. Construction; severability.

It is the intent of the legislature that each provision of this act shall operate with equal force and shall be severable and that, in the event that any provision of this act shall be held invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision shall be deemed severable, and the remaining provisions of this act shall be deemed fully enforceable.

Section 2. W.S. 5-8-102(a)(v) is amended to read:

5-8-102. Jurisdiction.

(a) The juvenile court has general jurisdiction in all matters and proceedings commenced therein or



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Caroline Valley

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SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

transferred to it by order of the district court concerning:

(v) The parents, guardian or custodian of any minor alleged to be delinquent, in need of supervision or neglected, and all persons living in the household with the minor, and

Section 3. W.S. 35-6-108 as 35-6-132, 35-6-113 as 35-6-134, 35-6-114 as 35-6-135 and 35-6-117 as 35-6-138 are amended and renumbered to read:

~~35-6-108~~ 35-6-132. Compilations of abortions; matter of record; exception.

(a) The state office of vital records services shall prepare and keep on file for seven (7) years compilations of the information submitted on the abortion reporting forms. The compilations shall be available as provided in this section. The state health officer, in order to maintain and keep such compilations current, shall file with the reports any new or amended information. The information submitted under W.S. ~~35-6-107~~ 35-6-131 and compiled under this section, except the report required under subsection (c) of this section, shall not be stored in any computer.

(b) An abortion reporting form received under W.S. ~~35-6-107~~ 35-6-131 shall be maintained in strict confidence by the state office of vital records services, shall not be a public record and shall not be made available except to the attorney general or a district attorney with appropriate jurisdiction pursuant to a criminal investigation or to the state board of medicine pursuant to an investigation. The attorney general or a district



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SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

attorney receiving an abortion form pursuant to this subsection shall keep the form and information from the form confidential except as may be required by law for a criminal prosecution. The state board of medicine receiving an abortion form pursuant to this subsection shall keep the form and information from the form confidential except as may be required by law to determine or enforce an action regarding licensure.

(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~~ 35-6-131. 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.

~~35-6-113~~ 35-6-134. Penalty for violating W.S. 35-6-130.

Any person, firm, corporation, group or association who violates W.S. ~~35-6-106~~ 35-6-130 is guilty of an offense punishable by a fine of not more than ten thousand dollars (\$10,000.00).



STATE OF WYOMING
Secretary of State

I hereby certify that this is a true
and complete copy of the document
as filed in this office.

Charles Gray
Secretary of State

By: *Anthony Valby*
Date: *3-21-23*

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

~~35-6-114~~ 35-6-135. Right to damages for discriminatory employment practices for refusal to perform abortion.

Any person or persons injured by any action prohibited in W.S. ~~35-6-106~~ 35-6-130 may, by civil action, obtain injunctive relief or damages.

~~35-6-117~~ 35-6-138. Use of appropriated funds for abortion prohibited.

~~(a) No funds appropriated by the legislature of the state of Wyoming shall be used to pay for abortions except when the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301 if the assault is reported to a law enforcement agency within five (5) days after the assault or within five (5) days after the time the victim is capable of reporting the assault, or when the life of the mother would be endangered if the unborn child was carried to full term. This subsection is repealed on the date that subsection (b) of this section becomes effective.~~

~~(b) No funds appropriated by the legislature of the state of Wyoming shall be used to pay for abortions, except when necessary to preserve the woman from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. This subsection is effective on the same date that W.S. 35-6-102(b) is effective.~~



STATE OF WYOMING
Secretary of State

I hereby certify that this is a true
and complete copy of the document
as filed in this office.

Clark Gray
Secretary of State

By: *Lynette Kelly*

Date: *3-21-23*

ORIGINAL HOUSE
BILL NO. HB0152

ENGROSSED

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

Section 4. W.S. 35-6-105 through 35-6-107, 35-6-109, 35-6-115 and 35-6-116 are renumbered as 35-6-129 through 35-6-131, 35-6-133, 35-6-136 and 35-6-137.

Section 5. W.S. 5-8-102(a)(vi), 35-6-101 through 35-6-104, 35-6-110 through 35-6-112, 35-6-118 and 35-6-119 are repealed.

Section 6. W.S. 35-6-117(a), renumbered as 35-6-138(a) by section 3 of this act, is repealed.

Section 7. The department of health shall promulgate all rules necessary to implement this act.



STATE OF WYOMING
Secretary of State

I hereby certify that this is a true
and complete copy of the document
as filed in this office.

Chuck Gray
Secretary of State

By: *Guthrie Valdez*
Date: *3-21-23*

ORIGINAL HOUSE
BILL NO. HB0152

ENGROSSED

ENROLLED ACT NO. 88, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

Section 8. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Alvt Sam
Speaker of the House

Dave Kinsley
President of the Senate

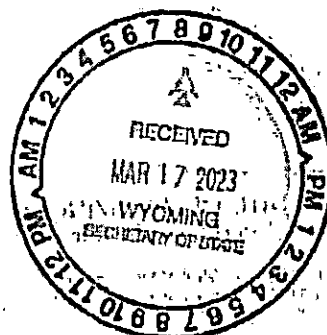
Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Kate Albott
Chief Clerk





STATE OF WYOMING
Secretary of State

I hereby certify that this is a true
and complete copy of the document
as filed in this office.

Chuck Gray
Secretary of State

By: *Christine Valler*

Date: *3-21-23*

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JOURNAL
of the
SENATE
of the
SIXTY-FIRST LEGISLATURE
OF WYOMING



GENERAL SESSION
JANUARY 11, 2011 THROUGH MARCH 3, 2011

WYOMING STATE LIBRARY
CHEYENNE WY 82002

JUN 13 2011

Attach. C

Nays: Senator(s) Case, Emerich, Esquibel, F., Nicholas, P., Rothfuss,
Schiffer and Von Flatern

Ayes 23 Nays 7 Excused 0 Absent 0 Conflicts 0

2/7/2011 H Received for Introduction
2/7/2011 H Introduced and Referred to H06
2/16/2011 H06 Recommended Do Pass

ROLL CALL

Ayes: Representative(s) Bonner, Botten, Davison, Jaggi, McKim, McOmie,
Petroff and Shepperson

Nays: Representative(s) Connolly

Ayes 8 Nays 1 Excused 0 Absent 0 Conflicts 0

2/16/2011 H Placed on General File
2/24/2011 H Passed CoW
2/25/2011 H Passed 2nd Reading
2/28/2011 H Passed 3rd Reading

ROLL CALL

Ayes: Representative(s) Barbutto, Berger, Blake, Blikre, Bonner, Botten,
Brechtel, Brown, Buchanan, Burkhart, Campbell, Cannady, Childers, Craft,
Davison, Edmonds, Eklund, Esquibel, K., Freeman, Gay, Gingery, Goggles,
Greear, Greene, Harshman, Harvey, Hunt, Illoway, Jaggi, Kasperik, Kroeker,
Krone, Lockhart, Loucks, Lubnau, Madden, McKim, McOmie, Miller, Moniz,
Nicholas, B., Peasley, Petersen, Petroff, Quarberg, Roscoe, Semlek,
Shepperson, Steward, Stubson, Teeters, Throne, Vranish, Wallis, Zwonitzer,
Dn. and Zwonitzer, Dv.

Nays: Representative(s) Byrd, Connolly and Patton

Excused: Representative(s) Pederson

Ayes 56 Nays 3 Excused 1 Absent 0 Conflicts 0

2/28/2011 Assigned Number SEJR No. 0003
2/28/2011 S President Signed SEJR No. 0003
3/1/2011 H Speaker Signed SEJR No. 0003
3/3/2011 Governor Signed SEJR No. 0003

S.J. No. 0002 Health care freedom.

Sponsored By: Senator(s) Nutting, Case, Driskill and Jennings and
Representative(s) Brechtel, Gay, Jaggi and Kroeker

A JOINT RESOLUTION proposing to amend the Wyoming Constitution by creating a
new section specifying that no federal or state law shall compel
participation in any health care system by any person, employer or health
care provider.

12/17/2010 Bill Number Assigned
1/11/2011 S Received for Introduction
1/11/2011 S Introduced and Referred to S01
1/20/2011 S01 Recommended Amend and Do Pass

ROLL CALL

Ayes: Senator(s) Burns, Hicks and Perkins

Nays: Senator(s) Christensen and Esquibel, F.

Ayes 3 Nays 2 Excused 0 Absent 0 Conflicts 0

1/20/2011

S Placed on General File

SJ0002SS001/ADOPTED (CORRECTED COPY)

Page 1-line 3 Delete "federal or state".
Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".
Page 2-line 7 After "All" insert "natural".
Page 2-line 8 After "their own" insert "lawful".
Page 2-line 10 Delete "federal or state".
Page 2-line 13 After "system" insert ", to obtain lawful health care services or penalize any person for non-participation".

Page 2-lines 15 through 19 Delete and insert:

"(c) The right to make decisions regarding lawful health care services is not a power delegated to the United States government, but is a power reserved to the state of Wyoming and its people under the ninth and tenth amendments to the constitution of the United States of America, and specifically reserved under article 7, section 20 of the Wyoming constitution."

Page 3-line 6 After "necessary" insert "laws,"; after "rules" insert "and regulations".

Page 3-line 14 After "which" insert "lawful".

Page 3-line 21 After "provided" insert "or participation required".

Page 3-line 23 After "compensation" insert "and for prisoners and others in the custody or care of the state or a political subdivision to the standard deemed appropriate and enacted into law by the legislature".
Delete "punishing" insert "prohibiting or imposing penalties or fines against".

Page 4-line 7 Delete "." insert ",".

Page 4-after line 7 Insert and renumber:

"(v) Affect the power of the state of Wyoming to involuntarily commit or hospitalize those who are a danger to themselves or others by reason of mental illness or condition;

(vi) Affect the power of the state of Wyoming to license and regulate the provision of health care to promote professional competence;

(vii) Affect the power of the state of Wyoming to protect the public from diseases, epidemics, harmful substances and harmful procedures; or

(viii) Affect the power of the state of Wyoming to regulate the business of health insurance and other business arrangements that promise payment for health care in the future in return for present payments.

(g) Notwithstanding article 16, section 6 of this constitution, the attorney general may, subject to the availability of appropriated funds and subject to any regulations and restrictions the legislature may provide by law, provide any resident of the state with assistance, including financial assistance, to protect the right to make health care decisions from being abridged by the federal government or its agents."

Page 4-line 9 Delete "(g)" insert "(h)". PERKINS, CHAIRMAN

1/27/2011

S Laid Back Pursuant to SR 10-4(a)

SJ0002SW001/ADOPTED

Delete the First Senate Standing Committee Amendment (SJ0002SS001/AC) entirely and further amend as follows:

Page 1-line 2 Delete "specifying that no" insert "providing that the right to health care access as defined by the

legislature is reserved to the citizens of the state of Wyoming."

- Page 1-lines 3 through 5 Delete.
Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".
Page 2-line 4 Delete and insert "Article 1, Section 38. Right of health care access."
Page 2-line 5 Delete.
Page 2-lines 7 through 24 Delete and insert "The right to health care access as defined by the legislature is reserved to the citizens of the state of Wyoming."
Page 3-lines 1 through 23 Delete.
Page 4-lines 1 through 24 Delete.
Page 5-lines 1 through 14 Delete.
Page 6-line 1 After "will" delete balance of line and insert "provide that the right to health care access as defined by the legislature is reserved to the citizens of the state of Wyoming."
Page 6-lines 2 through 11 Delete. SCHIFFER

SJ0002SW002/FAILED (CORRECTED COPY)

Delete the Senate Standing Committee Amendment. (SJ0002SS001/A) and the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) entirely and further amend as follows:

- Page 1-line 3 Delete "federal or state".
Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".
Page 2-lines 7 through 24 Delete and insert:

"(a) All competent adults shall have the right to choose and provide for their own health care and that of their dependent children, and no law or regulation shall:

(i) Limit the ability of those persons to obtain beneficial health care from an appropriate licensed health care provider acting within the lawful scope of the provider's practice, provided the person is willing and able to pay for the care in a manner satisfactory to the provider;

(ii) Sanction or penalize any health care provider acting within the lawful scope of the provider's practice for competently providing health care to any person;

(iii) Subject to the provisions of this section, prohibit or require the purchase of health insurance except as a condition of receiving benefits from the government.

(b) This section does not affect the power of the state of Wyoming to:

(i) Involuntarily commit or hospitalize those who are a danger to themselves or others by reason of mental illness or condition;

(ii) License and regulate the provision of health care to promote professional competence;

(iii) Protect the public from diseases, epidemics, harmful substances and harmful procedures; or

(iv) Regulate the business of health insurance and other business arrangements that promise payment for health care in the future in return for present payments.

(c) Notwithstanding article 16, section 6 of this constitution, the attorney general may, subject to the availability of appropriated funds and subject to any regulations and restrictions the legislature may provide by law, provide any resident of the state with assistance, including financial assistance, to protect the right to make health care decisions from being abridged by the federal government or its agents.

(d) Nothing in this constitution shall be construed as requiring the state or any political subdivision to provide or pay for any health care, except for the workers' compensation system and for prisoners and others in the custody of the state or a political subdivision thereof to the standard deemed appropriate and enacted into law by the legislature."

Page 3-lines 1 through 23 Delete;

Page 4-lines 1 through 24 Delete.

Page 5-lines 1 through 14 Delete. SCOTT

1/28/2011

S Passed CoW

SJ0002S2001/ADOPTED (CORRECTED COPY)

Page 1-lines 1 through 5 Delete, including the Senate Standing Committee Amendment (SJ0002SS001/AC) and the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines and insert:

"A JOINT RESOLUTION proposing to amend the Wyoming Constitution by creating a new section providing that the right to make health care decisions is reserved to the citizens of the state of Wyoming, providing for direct payments to healthcare providers, allowing the legislature to establish restrictions and requiring the state of Wyoming to protect healthcare rights from undue governmental infringement."

Page 2-lines 7 through 24 Delete, including the Senate Standing Committee Amendment (SJ0002SS001/AC) and the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines and insert:

"(a) Each competent adult shall have the right to make his or her own healthcare decisions. The parent, guardian or legal representative of any other natural person shall have the right to make healthcare decisions for that person.

(b) Any person may pay, and a healthcare provider may accept, direct payment for healthcare without imposition of penalties or fines for doing so.

(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 and accomplish the purposes set forth in the Wyoming Constitution.

(d) The state of Wyoming shall act to preserve these rights from undue governmental infringement."

Page 3-lines 1 through 24 Delete, including the Senate Standing Committee Amendment (SJ0002SS001/AC) and the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines.

Page 4-lines 1 through 24 Delete, including the Senate Standing Committee Amendment (SJ0002SS001/AC) and the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines.

Page 5-lines 2 through 14 Delete, including the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines.

Page 6-lines 2 through 11 Delete, including the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to these lines and insert:

"It permits any person to pay and any healthcare provider to receive direct payment for services. The amendment permits the legislature to place reasonable and necessary restrictions on healthcare consistent with the purposes of the Wyoming Constitution and provides that this state shall act to preserve these rights from undue governmental infringement." PERKINS

1/31/2011

S Passed 2nd Reading

SJ0002S3001/ADOPTED

Page 2-lines 7 through 24 In the Perkins Second Reading Amendment (SJ0002S2001/AC) to these lines in subsection (c), delete "and accomplish the" insert "or to accomplish the other".

Page 6-line 1 In the Schiffer Committee of the Whole Amendment (SJ0002SW001/A) to this line, delete "health care access as defined by the legislature" insert "make health care decisions". PERKINS

SJ0002S3002/FAILED

Delete the Senate Standing Committee Amendment (SJ0002SS001/AC), the Schiffer Committee of the Whole Amendment (SJ0002SW001/A), the Perkins Second Reading Amendment (SJ0002S2001/AC) and the Perkins Third Reading Amendment (SJ0002S3001/A) entirely and further amend as follows:

Page 1-lines 1 through 5 Delete and insert:

"A JOINT RESOLUTION proposing to amend the Wyoming Constitution by creating a new section providing that the right to choose health care access, as defined by the legislature, is reserved to the citizens of the state of Wyoming."

Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".

Page 2-lines 4 through 24 Delete and insert:

"Article 1, Section 38. Right to choose health care access.

The right to choose health care access, as defined by the legislature, is reserved to the citizens of the state of Wyoming."

Pages 3 and 4 Delete.

Page 5-lines 1 through 14 Delete.

Page 6-lines 1 through 11 Delete and insert:

"The adoption of this amendment will provide that the right to choose health care access, as defined by the legislature, is reserved to the citizens of the state of Wyoming." SCHIFFER

ROLL CALL

Ayes: Senator(s) Bebout, Burns, Coe, Esquibel, F., Geis, Hastert, Johnson, Nicholas, P., Rothfuss, Schiffer and Von Flatern

Nays: Senator(s) Anderson, Barnard, Case, Christensen, Cooper, Dockstader, Driskill, Emerich, Hicks, Hines, Jennings, Landen, Martin, Meier, Nutting, Perkins, Peterson, Ross and Scott

Ayes 11 Nays 19 Excused 0 Absent 0 Conflicts 0

SJ0002S3003/FAILED

Delete the Senate Standing Committee Amendment (SJ0002SS001/AC), the Schiffer Committee of the Whole Amendment (SJ0002SW001/A), the Perkins Second Reading Amendment (SJ0002S2001/AC), the Perkins Third Reading Amendment (SJ0002S3001/A) and the Schiffer Third Reading Amendment (SJ0002S3002/A) entirely and further amend as follows:

Page 1-lines 1 through 5 Delete and insert:

"A JOINT RESOLUTION proposing to amend the Wyoming Constitution by creating a new section providing that the right to make health care decisions is reserved to the citizens of the state of Wyoming."

Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".

Page 2-lines 4 through 24 Delete and insert:

"Article 1, Section 38. Right to choose health care access."

The right to healthcare independence, including individual healthcare autonomy, open access to services and an unrestricted choice of providers, shall be reserved to the people of Wyoming."

Pages 3 and 4 Delete.

Page 5-lines 2 through 14 Delete.

Page 6-lines 1 through 11 Delete and insert:

"The adoption of this amendment will provide that the right to healthcare independence, including individual healthcare autonomy, open access to services and unrestricted choice of providers, shall be reserved to the people of Wyoming." ROTHFUSS

ROLL CALL

Ayes: Senator(s) Barnard, Burns, Esquibel, F., Hastert, Hicks, Hines, Martin, Nicholas, P., Rothfuss, Schiffer and Von Flatern.

Nays: Senator(s) Anderson, Bebout, Case, Christensen, Coe, Cooper, Dockstader, Driskill, Emerich, Geis, Jennings, Johnson, Landen, Meier, Nutting, Perkins, Peterson, Ross and Scott

Ayes 11 Nays 19 Excused 0 Absent 0 Conflicts 0

SJ0002S3004/FAILED

Delete the Senate Standing Committee Amendment (SJ0002SS001/AC), the Schiffer Committee of the Whole Amendment (SJ0002SW001/A), the Perkins Second Reading Amendment (SJ0002S2001/AC), the Perkins Third Reading Amendment (SJ0002S3001/A); the Schiffer Third Reading Amendment (SJ0002S3002/A) and the Rothfuss Third Reading Amendment (SJ0002S3003/A) entirely and further amend as follows:

Page 1-lines 1 through 5 Delete and insert:

"A JOINT RESOLUTION proposing to amend the Wyoming Constitution by creating a new section providing that the right to choose health care access, as defined by the legislature, is reserved to the citizens of the state of Wyoming."

Page 1-line 12 Delete "7" insert "1"; delete "24" insert "38".

Page 2-lines 4 through 24 Delete and insert:

"Article 1, Section 38. Right to choose health care access.

The right to choose health care access, as reasonably defined by the legislature, is reserved to the citizens of the state of Wyoming. The state of Wyoming shall act to preserve these rights from undue governmental infringement."

Pages 3 and 4 Delete.

Page 5-lines 1 through 14 Delete.

Page 6-lines 1 through 11 Delete and insert:

"The adoption of this amendment will provide that the right to choose health care access, as defined by the legislature, is reserved to the citizens of the state of Wyoming and that the state of Wyoming shall act to preserve these rights from undue governmental infringement." MEIER

ROLL CALL

Ayes: Senator(s) Burns, Hicks, Meier and Schiffer

Nays: Senator(s) Anderson, Barnard, Bebout, Case, Christensen, Coe, Cooper, Dockstader, Driskill, Emerich, Esquibel, F., Geis, Hastert, Hines, Jennings, Johnson, Landen, Martin, Nicholas, P., Nutting, Perkins, Peterson, Ross, Rothfuss, Scott and Von Flatern

Ayes 4 Nays 26 Excused 0 Absent 0 Conflicts 0

2/1/2011 S Passed 3rd Reading

ROLL CALL

Ayes: Senator(s) Anderson, Barnard, Bebout, Burns, Case, Coe, Cooper, Dockstader, Driskill, Geis, Hicks, Hines, Jennings, Johnson, Landen, Martin, Meier, Nutting, Perkins, Peterson, Ross, Schiffer and Scott

Nays: Senator(s) Christensen, Emerich, Esquibel, F., Hastert, Nicholas, P., Rothfuss and Von Flatern

Ayes 23 Nays 7 Excused 0 Absent 0 Conflicts 0

2/2/2011 H Received for Introduction

2/3/2011 H Introduced and Referred to H01

2/8/2011 H01 Recommended Do Pass

ROLL CALL

Ayes: Representative(s) Brechtel, Brown, Cannady, Krone and Peasley

Nays: Representative(s) Barbutto, Greene, Nicholas, B. and Throne

Ayes 5 Nays 4 Excused 0 Absent 0 Conflicts 0

2/8/2011 H Placed on General File

2/11/2011 H Passed COW

SJ0002H2001/ADOPTED (TO ENGROSSED COPY)

Page 2-line 9 After "." delete balance of the line,

Page 2-lines 10 through 12 Delete entirely. THRONE

2/14/2011 H Passed 2nd Reading

SJ0002H3001/ADOPTED (TO ENGROSSED COPY)

Delete the Throne second reading amendment (SJ0002H2001/AE) entirely. EDMONDS, BUCHANAN

SJ0002H3002/FAILED (TO ENGROSSED COPY)

Page 3-line 1 Delete "shall" insert "may".

Page 3-line 14 Delete "shall" insert "may". ZWONITZER, DV.

2/15/2011 H Passed 3rd Reading

ROLL CALL

Ayes: Representative(s) Berger, Blikre, Bonner, Botten, Brechtel, Brown, Buchanan, Burkhardt, Campbell, Cannady, Childers, Davison, Edmonds, Eklund, Gay, Gingery, Greear, Harshman, Harvey, Hunt, Illoway, Jaggi, Kasperik, Kroeker, Krone, Lockhart, Loucks, Lubnau, Madden, McKim, McOmie, Miller, Moniz, Nicholas, B., Patton, Peasley, Pederson, Petersen, Quarberg, Roscoe, Semlek, Shepperson, Steward, Stubson, Teeters, Vranish, Wallis, Zwonitzer, Dn. and Zwonitzer, DV.

Nays: Representative(s) Barbutto, Blake, Byrd, Connolly, Craft, Esquibel, K., Freeman, Goggles, Greene, Petroff and Throne

Ayes 49 Nays 11 Excused 0 Absent 0 Conflicts 0

2/15/2011 Assigned Number SEJR No. 0002

2/16/2011 S President Signed SEJR No. 0002

2/16/2011 H Speaker Signed SEJR No. 0002

2/19/2011 Governor Signed SEJR No. 0002

CONTACT INFORMATION

PHONE NUMBERS

WYOMING SECRETARY OF STATE

Election Division 307-777-5860
Wyoming Relay 711
Website <http://sos.wy.state.wy.us>
E-mail Address elections@sos.wy.gov

FEDERAL VOTING ASSISTANCE PROGRAM

FVAP www.fvap.gov
For military and overseas citizens



Secretary of State's Office
Election Division

Peggy Nighswonger, State Election Director
200 W. 24th Street, Cheyenne, WY 82002
Telephone: 307-777-5860
Fax: 307-777-7640
<http://sos.wy.state.wy.us>

2012 WYOMING VOTER'S GUIDE



Primary Election
August 21, 2012

General Election
November 6, 2012

MAX MAXFIELD
Secretary of State

A MESSAGE FROM SECRETARY OF STATE MAX MAXFIELD

Dear Wyoming Citizens:

I strongly encourage everyone who is eligible to vote, to register and exercise their right to vote. Wyoming law encourages citizens to register and vote by allowing election day registration at the polls on both the Primary and General Election days.

Wyoming has a history of high voter turnout. Remember, it is your right and your responsibility to vote.

Every vote is important and your vote can make a difference.



Sincerely,

Max Maxfield
Secretary of State

2012 OFFICES UP FOR ELECTION

- U.S. President/Vice President
- U.S. Senate (6-year term)
- U.S. House of Representatives (2-year term)
- Wyoming State Senate (Even Numbered Districts)
- Wyoming State House (All Districts)
- Judicial Offices
- County Offices
- Municipal Offices
- School Board
- Community College Trustees

2012 CONSTITUTIONAL AMENDMENTS

Constitutional Amendments will only appear on the General Election Ballot. In order to pass, a Constitutional Amendment must receive a majority of the total ballots cast in the election.

Constitutional Amendment A:

The adoption of this amendment will provide that the right to make health care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and any health care provider to receive direct payment for services. The amendment permits the legislature to place reasonable and necessary restrictions on health care consistent with the purposes of the Wyoming Constitution and provides that this state shall act to preserve these rights from undue governmental infringement.

FOR
☐

AGAINST
☐

Constitutional Amendment B:

The adoption of this amendment will recognize and preserve the heritage of Wyoming citizens' opportunity to fish, hunt and trap wildlife, subject to regulation as prescribed by law.

FOR
☐

AGAINST
☐

Constitutional Amendment C:

The adoption of this amendment would expand the authority of district court commissioners. If the amendment is adopted, a district court commissioner could perform additional duties assigned by a district court judge, subject to any restrictions the legislature may impose by law.

FOR
☐

AGAINST
☐

GENERAL INFORMATION

VOTER REGISTRATION REQUIREMENTS

- Citizen of the United States
- 18 years of age by General Election Day
- Resident of the State of Wyoming
- Not currently adjudicated mentally incompetent
- Not been convicted of a felony (or rights restored)

HOW TO REGISTER TO VOTE

An applicant may register to vote in person at the County Clerk's Office or by mail, not less than (14) days before an election. A person may also register and vote at their polling place on election day. You may access the Wyoming Voter Registration Application Form on the Secretary of State's website at

<http://sos.wy.state.wy.us/Forms/Elections/General/vrapp.pdf>.

NOT SURE IF YOU ARE REGISTERED?

Contact your local County Clerk's Office. (County Clerk information is located on the panels to the right).

KEEP YOUR REGISTRATION CURRENT:

- You are registered for 2012 if you voted in Wyoming at the 2010 General Election. (Wyoming maintains a registry of voters; you need only register once while living in Wyoming, provided you vote in each General Election and do not move.)
- If you move to a different precinct or change your name, notify your County Clerk.
- If you move to a different county you must re-register in that county.
- If you have questions about your registration, contact your County Clerk.

RESTORATION OF VOTING RIGHTS:

Visit our website at <http://sos.wy.state.wy.us/Elections/RightsRestoration.aspx>, or contact the Wyoming Board of Parole at (307) 777-5444.

GENERAL INFORMATION

HOW TO FIND YOUR POLLING PLACE/PRECINCT

You can verify your polling place by accessing the Secretary of State's website at <http://sos.wy.state.wy.us/Elections/PollPlaceLookup.aspx>, or calling your local County Clerk's Office, or going to the County's website to see if a search can be conducted there.

IF YOU DO NOT WANT TO VOTE FOR EVERYTHING ON THE BALLOT

If you do not want to vote for a particular office or item on the ballot, just skip that portion of the ballot. If you fail to vote on any Constitutional Amendment or Initiative, the result is the same as if you voted against that issue.

SAMPLE BALLOTS

Sample ballots are available to view at your local County Clerk's Office.

WRITE-IN VOTES

If you want to vote for someone whose name does not appear on the ballot, you can simply write the name of the individual in the space provided and blacken the oval next to the name.

VOTING ABSENTEE

A qualified elector may apply for an absentee ballot at anytime during the calendar year in which the election is held, but not on the day of the election. Remember to return your absentee ballot immediately to ensure it will be delivered to the County Clerk's Office not later than 7 p.m. on Election Day.

VOTING ASSISTANCE

If you require assistance to vote by reason of disability or inability to read or write English, you may be given assistance by a person of your choice. Also, if you have questions regarding accessibility of your polling place, please contact your County Clerk.

COUNTY CLERKS

ALBANY COUNTY CLERK

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Star Tribune

Sunday, November 4, 2012

U.S. SENATE
U.S. HOUSE
LEGISLATURE
CITY COUNCIL
COUNTY BOARD
SCHOOL BOARD
ELECTION DAY
NOVEMBER 6, 2012



VOTER GUIDE

SD28

Continued from page G16

into the hands of the people closest to the students is a positive goal. Our SFD has created tensions with school districts

by overruling their decisions and imposing their recommendations on projects throughout the state. Decisions made by those appointed rather than those elected make accountability and respect for the

people's wishes more elusive.

The SFD must be constantly reminded of its mission by the governor and legislature and held to account.

6. Say one thing positive about

your opponent(s):

Anyone willing to put himself out there in the challenging realm of politics deserves respect and a thank you. So, thank you!

2012 constitutional amendments: pro and con

By the Wyoming League of Women Voters

Constitutional amendment proposals have passed each legislative body by a two-thirds vote before appearing on the general election ballot.

Each amendment is voted on individually and each must receive an affirmative vote of a majority of all those voting in the election - thus, a person who does not vote on the amendment but votes on other items on the ballot is counted as a "no" vote.

Amendment A

Article 1, Section 36. 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.

b) Any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so.

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.

The ballot will read: "The adoption of this amendment will provide that the right to make health care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and

any health care provider to receive direct payment for services. The amendment permits the legislature to place reasonable and necessary restrictions on health care consistent with the purposes of the Wyoming Constitution and provides that this state shall act to preserve these rights from "undue governmental infringement."

Pro

• This amendment would ensure that there will be no requirements concerning health care insurance for Wyoming residents.

• This proposed amendment is an attempt to remove Wyoming from the effects of the Patient Protection Affordable Care Act passed by Congress.

• This proposed amendment is a step toward exempting Wyoming residents from any future expense associated with nationally funded health insurance programs.

Con

• Passage of this amendment would mean Wyoming residents would not benefit from any measures to reduce health care insurance premiums.

• Passage of this amendment would not prohibit insurers from excluding or dropping people with pre-existing conditions or who develop serious, costly medical problems.

• Passage of this amendment may increase the possibility that Wyoming could be involved in court action against the federal government that would be costly, lengthy and not in the best interests of Wyoming citizens.

Amendment B

Article 1, Section 38. Opportunity to

hunt, fish and trap.

The opportunity to fish, hunt and trap wildlife is a heritage that shall forever be preserved to the individual citizens of the state, subject to regulation as prescribed by law, and does not create a right to trespass on private property, diminish other private rights or alter the duty of the state to manage wildlife.

The ballot will read: "The adoption of this amendment will recognize and preserve the heritage of Wyoming citizens' opportunity to fish, hunt and trap wildlife, subject to regulation as prescribed by law."

Pro

• Passage of this amendment might help to limit the influence of various national groups which want to restrict hunting and trapping on state and federal lands.

• This amendment is designed to preserve hunting, fishing and trapping for future generations of Wyoming residents on both public and private lands.

Con

• This proposed amendment elevates the right to hunt, fish and trap to a superior position over other inherent rights by placing it in the Wyoming Constitution.

• There is no immediate threat to these rights in Wyoming, and statutory authority already exists to protect these rights.

Amendment C

Article 5, Section 14. District courts generally; commissioners.

The Legislature shall provide by law for the appointment by the several district courts of one or more district court commissioners (who shall be persons learned in the law) in each organized county in which a district court

is holden, such commissioners shall have authority to perform such (strike wording) chamber (end strike wording) business (strike wording) in the absence of the district judge from the county or upon his written statement filed with the papers, that it is improper for him to act (end strike wording), as may be prescribed by law, to take depositions and perform such other duties, and receive such compensation as shall be prescribed by law.

(Note: Stricken words would be removed from existing law.)

The ballot will read: The adoption of this amendment would expand the authority of district court commissioners. If the amendment is adopted, a district court commissioner could perform additional duties assigned by a district court judge, subject to any restrictions the legislature may impose by law.

Pro

• The case load for district judges has increased dramatically since the Wyoming Constitution was written. Using court commissioners for some non-trial duties will help to expedite the legal process for Wyoming citizens.

• Many statutes have specific, short, time requirements for district court attention. For example: juvenile actions. If the district judge is hearing a trial, or is in another county, a court commissioner can act on behalf of the judge.

Con

• The existing language has worked since the Wyoming Constitution was written.

• Court commissioners have not gone through the selection process used to appoint district judges.

Wyo. voters get say on Obamacare mandate

THE AMENDMENT THAT APPEARS ON WYOMING BALLOTS NOV. 6 IS UNLIKELY TO HAVE ANY REAL IMPACT OTHER THAN TO SEND A MESSAGE TO D.C., EXPERTS SAY.

By Trevor Brown

tbrown@wyomingnews.com

CHEYENNE—A proposal designed to block the federal health-care act's insurance mandate in Wyoming will go before state voters on Nov. 6.

But legal experts say proposed Constitutional Amendment A will have little, or no, real impact.

**Election
2012**

"It may play well politically in Wyoming, but it won't have any effect," said Timothy Jost, a law professor and expert in health care law at Washington and Lee University in Virginia.

"The supremacy clause (of the U.S. Constitution) says that federal laws are supreme over state laws and that any state laws would be pre-empted."

The proposal is one of three proposed constitutional amendments on the general election ballot in Wyoming.

Ballot language on proposed Amendment A reads:

"The adoption of this amendment will provide that the right to make health-care decisions is reserved to the citizens of the state of Wyoming. It permits any person to pay and any health care

See Mandate, page A10

Attach. F

Mandate: Voters could send a message to D.C.

Continued from A1

provider to receive direct payment for services."

It also says the Legislature can place "reasonable and necessary restrictions on health care" and that the state shall preserve residents' rights from undue governmental infringement.

Lawmakers passed a bill during the 2011 session to create the ballot measure.

According to the National Conference of State

What's next

Wyoming voters will go the polls on Nov. 6 to decide the fate of proposed Constitutional Amendment A. Among other things, it says Wyoming residents have the right to decide if they want health insurance. However, experts say it is likely to have any legal impact.

Legislatures, 16 states have passed laws or constitutional

changes saying they will not implement or enforce the individual mandate.

Alabama and Florida also have ballot measures to be voted on this November.

Despite this push by mainly Republican-led states, the nonpartisan Congressional Research Service also has said federal law trumps the states' efforts.

In a memo to federal lawmakers, Kathleen Swendiman, a legislative

attorney for the service, wrote:

"Now that the Supreme Court has upheld the individual coverage mandate in the Affordable Care Act in *NFIB v. Sebelius*, this federal law fully applies to individuals, and any contradictory state laws will have no effect on this ACA provision."

But some politicians and legal experts say the proposed amendment can still be consequential.

State Sen. Leslie Nutting, R-Cheyenne, sponsored the bill that created the ballot measure. She said it could be used as a tool in future legal challenges if other federal health care changes are made.

"The American Care Act could still be defunded and something else could replace it," she said. "Wyoming needs to be in a good legal standing when a replacement is decided on."

She added that supporting the proposed amendment also will send a message to Washington that Wyoming voters disapprove of the law.

Steve Klein is a staff attorney with the Wyoming Liberty Group.

He said the proposal also could be used if Wyoming or other states want to challenge the federal act through different methods other than the arguments used in the lawsuit that the Supreme Court ruled on.

Klein added that the proposal could be used to argue that the federal government's authority is limited under the Ninth and Tenth amendments.

"I can't say this will destroy Obamacare," he said. "But there are certain Supreme Court precedents out there."

He added there are more possible uses for the proposed amendment on the

state level. He said legislation, such as one that was proposed to mandate students get meningitis vaccinations, could be challenged.

Additionally, he said, it could give the state cover if it decides not to implement parts of the health care law.

"A lot of the law requires a lot of cooperation with the states on things such as the health insurance exchanges," he said. "But the state's hands would be essentially tied from having to carry those out."

But Stephen Feldman, a professor at the University of Wyoming's College of Law, said the proposal would do little in that regard.

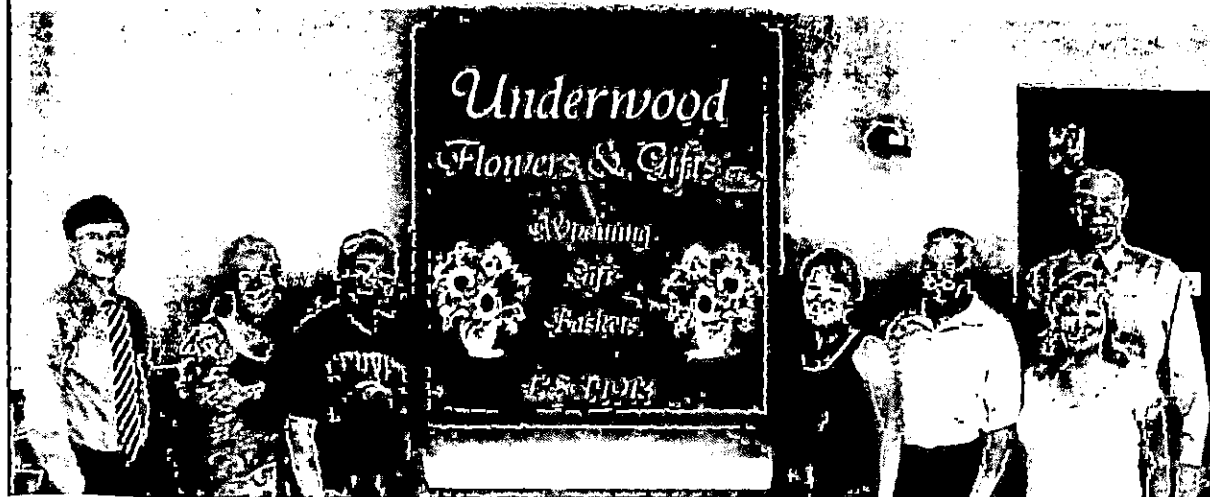
"I'm pretty confident that the Wyoming amendment would be unconstitutional," he said. "The U.S. Supreme Court has already said the Affordable Care Act is a constitutional exercise of Congress power, so states cannot not follow the federal law."

State Sen. Floyd Esquibel, D-Cheyenne, who voted against the bill that created the ballot measure, said he is worried about its potential unintended consequences.

"I really don't know what it will do," he said. "Any constitutional amendment should be looked at very seriously, and time should be taken to consider all the ramifications and consequences of what

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