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IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
IN AND FOR TETON COUNTY, WYOMING

DANIELLE JOHNSON, et al.,	)	
	)	Case No.: 18853
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE OF WYOMING, et al.,	)	
	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY TO STATE DEFENDANTS' RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

In their motion for a temporary restraining order against the Wyoming Abortion Medication Ban, Plaintiffs made a detailed legal and factual showing that the statute is not reasonable or necessary to protect the public health and welfare, and that it unduly infringes on the constitutional right of women to make their own health care decisions. Rather than respond to this showing, the State's opposition brief denies that Section 38 means what it says and urges the Court simply to disregard Plaintiffs' showing.

In failing to respond to the substance of Plaintiffs' arguments the State has effectively conceded it has no response, a conclusion that becomes apparent when, at page 35 of its opposition, the State belatedly attempts to articulate the governmental purpose of the Medication Ban: "to further[] the State's interest in preserving 'prenatal life at all stages of development.'" But the Medication Ban does no such thing. On its face, the statute does not ban abortion at all, but instead requires that some otherwise legal abortions be performed by means other than with medication (i.e., surgically).

By equating a medication ban with an outright ban on abortion, the State implicitly acknowledges that the real purpose of the Medication Ban is to affect a backdoor ban on abortion while evading legal scrutiny of its true purpose. The Court should not countenance such gamesmanship, and, as it did with the Criminal Abortion Ban, should grant a temporary restraining order against the Medication Ban.

II. ARGUMENT

A. Plaintiffs Have Established That The Medication Abortion Ban Is Likely Unconstitutional Under Wyoming Constitution Section 38

The State has done nothing to rebut the Plaintiffs' showing that their challenge to the Medication Abortion Ban is likely to succeed on the merits. *See CBM Geosolutions, Inc. v. Gas*

Sensing Tech. Corp., 2009 WY 113, ¶ 8, 215 P.3d 1054, 1057 (Wyo. 2009). Much of the State's response is devoted to arguing that the unambiguous language of Section 38 does not mean what it says. In support of this argument, the State offers legislative history and media commentary in an effort to rewrite Section 38 to its liking. But as the Court already found in granting a TRO against the Criminal Abortion Ban, the language of Section 38 is unambiguous and therefore "there is no room left for construction." Order Granting Motion For Temporary Restraining Order, April 17, 2023 ("TRO Order") at ¶ 36.

While generally acknowledging this rule of construction, the State points to Wyoming Supreme Court cases considering extrinsic evidence that is ***consistent*** with unambiguous statutes and constitutional provisions. Opp. at 5. Such authority offers no support for the State's effort to adopt an interpretation of Section 38 that is ***contrary*** to the unambiguous language of that provision. And even if the Court were inclined to consider the State's extrinsic evidence, this evidence directly refutes the State's proffered interpretation of Section 38.

1. The State Denies The Plain Meaning Of The Term "Health Care"

The State first argues that the term "health care," as used in Section 38, does not include abortion. However, the Court has already found that the term "health care" includes abortion, because "abortions are utilized by medical professionals to restore and maintain the health of their patients." TRO Order at ¶ 39. In its opposition, the State concedes that "[w]ithout question, when a medical professional performs or causes an abortion, the abortion involves medical services to the extent it requires surgery or the prescribing and administering of medication." Opp. at 31. Nonetheless, the State claims that abortion is not health care in every case, because in some it may not "be intended to restore the body, mind, or spirit of the pregnant woman from pain, physical disease, or sickness," but instead is undertaken for "family, career, or financial considerations." Opp. at 31.

The State's argument fails for four separate reasons. First, no definition of health care, including that offered by the State, is contingent on the reasons for which a person undergoes medical treatment. Second, the State's definition of health care is inconsistent with Wyoming law. Under the Wyoming Health Care Decisions Act, "health care" is defined as "any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition." Wyo. Stat. § 35-22-402(a)(viii). Nothing in this definition requires a physical illness or a particular intent. And the Medication Ban itself refers to medication abortion as "medical treatment." Wyo. Stat. 35-6-120(b)(iii).

Third, the dictionary definitions of "health care" and "health" upon which the State relies affirmatively defeat its argument. The State references the Black's Law Dictionary definition of "health care" as "efforts made to maintain or restore health, esp. by trained and licensed professionals." Opp. at 17. The State then claims that this definition is modified by Merriam-Webster's definition of "health" as "the condition of being sound in body, mind, or spirit, *esp.:* freedom from physical disease or pain." *Id.* at 18. From this mixing and matching of definitions, the State asserts that to establish that abortion is health care, abortion must satisfy four separate and distinct requirements: 1) it must involve "services" that are 2) "usually provided by medical professionals" in order to 3) "restore or maintain the body, mind or spirit" from 4) "pain, physical disease, or sickness."

However, the State's proffered test for health care is contrary to the actual definitions it references. Most significantly, those definitions do not require that health care be addressed to "pain, physical disease, or sickness." Rather, the Merriam-Webster broadly defines "health" as being "sound or whole in body, mind, or soul." Opp. at 17. The words "freedom from physical disease or pain" are provided ***as an example*** of health, not as a requirement of the definition. This is apparent not only from the notation that precedes the phrase ("esp.:") but also by the definition

itself, which includes being sound in mind and soul, which plainly goes well beyond physical disease or pain. Read as they actually appear, the definitions offered by the State encompass any medical treatment to restore the soundness of a woman's body, mind or soul—a definition that easily encompasses any and all abortions.

Finally, even construing the definitions narrowly, as the State does, leads to the same conclusion. Any person who has endured pregnancy or childbirth can attest to the physical pain that is inherent in even a healthy pregnancy or birth. *See* Ex. 5, Anthony, ¶¶ 14–15, 20, 24–25 (describing medical complications that can be treated by abortion medication as well as medical risks associated with pregnancy in general). It therefore is beyond credible dispute that medication abortion is health care.

2. The State Denies Section 38's Express Limitations On State Authority

The State next argues that it has plenary power to adopt any restrictions on health care, without limitation. According to the State, this is because Section 38 "unambiguously contemplates that the Legislature will determine what medical services are legally available." Opp. at 20. And for good measure, the State asserts that "[a]s consumers of medical services, patients have no direct role in determining what services legally are available." *Id.*

In so arguing, the State attempts to render Section 38 meaningless. That provision affords Wyomingites the right to make their own health care decisions. If the State may dictate, without limitation, what health care is available to the citizens, then plainly Wyomingites have no power to decide on their own health care. Moreover, the State's argument wholly ignores subsections (c) and (d) of Section 38, which unmistakably impose significant limitations on the State's power to restrict a woman's health care: Such regulation must be both reasonable and necessary to protect public health and welfare ***and*** may not unduly infringe upon the right to make one's own health care decisions.

Rather than attempt to explain how the Medication Ban is permissible under these limitations, the State simply pretends the limitations do not exist. As becomes clear later in the State's opposition, this approach is dictated by the State's inability to even attempt to justify the Medication Ban as reasonable or necessary.

3. The State Denies That Section 38 Means What It Says

The bulk of the State's reply is devoted to a variety of arguments denying the import of the unambiguous terms of Section 38. Taken together, the State's arguments appear intended to rewrite the Constitution to fit the Medication Abortion Ban. But it is the legislature that must conform its laws to the Constitution, not the other way around.

First, the State argues that Section 38 was not intended to guarantee Wyoming citizens the right to make their own health care decisions at all, but instead was simply intended to "protect Wyoming citizens from federal overreach in regulating health matters." Opp. at 26. In support of this argument, the State attaches legislative history and media commentary surrounding the various proposals that ultimately resulted in the legislature's proposal to Wyoming voters. The Court has already found these materials inadmissible in light of the unambiguous language of Section 38. TRO Order at ¶ 36. In any event, the State fails to explain how the *legislative* history of the proposed amendment has any bearing on the intent of the nearly 200,000 Wyomingites who voted to adopt Section 38.

Even the caselaw cited by the State looked to the ***constitutional debates***—not legislative history—in reviewing of the meaning of the constitution, and did so only with "some trepidation," acknowledging that statements of individual delegates do not shed light on the intentions of those voting on the constitution. Opp. at 5, 23 (citing *Powers v. State*, 2014 WY 15, ¶ 39; 318 P.3d 300, 314 (2014)). As a result, none of the materials offered by the State can possibly aid the Court in interpreting the unambiguous terms of Section 38.

Moreover, the extrinsic evidence offered by the State once again defeats its own argument. Some of the early versions of the bill that resulted in the proposed amendment included language expressly denying the federal government's power to regulate health care: "The right to make decisions regarding lawful health care services is not a power delegated to the United States government . . . ." Opp., Att. C at 295. This language was dropped from the final proposed amendment that was submitted to Wyoming voters (no doubt because any effort to limit the authority of the federal government would have run afoul of the Supremacy Clause of the U.S. Constitution). Thus, the State's interpretation of Section 38 relies upon a provision that was considered and ***rejected*** by the legislature, and never voted upon by Wyomingites.

In any event, the evidence offered by the State cannot override the unambiguous language of Section 38, which refers neither to the Affordable Care Act nor to the federal government, but instead broadly confers upon Wyoming citizens the right to control their own health care decisions. *See* TRO Order at ¶¶ 36–37.

Second, the State attempts to revise the equally unambiguous language in subsection (d) of Section 38. According to the State, its duty to protect Wyomingites from "undue government infringement" applies only to infringement from the ***federal*** government. Opp. at 28. But Section 38(d) broadly applies to "undue government infringement," not to "undue federal government infringement."

And the same legislative history upon which the State relies shows that the legislature very well knew how to reference infringement of rights by the federal government when it so intended. An early version of the proposed amendment provided that "the attorney general may . . . provide any resident of the state with assistance . . . to protect the right to make health care decisions from being abridged by the ***federal government*** or its agents." Opp., Att. C at 296 (emphasis added). That the final version of the amendment did not include similar language provides clear evidence

that the legislature did not intend to limit proposed Section 38(d) to infringement by the federal government. Yet again, the State's own evidence defeats its argument.

Third, the State nonsensically claims that an abortion cannot constitute a woman's "own health care decision," because that decision impacts a fetus. Opp. at 29. According to the State, Section 38 only protects health care decisions "provided those decisions do not affect others." *Id.* The State is attempting to read into Section 38 terms that appear nowhere in that provision. To suggest, as the State does, that a woman's decision to undergo an abortion does not relate to her "own" health care is, simply put, absurd.

And the State fails to grapple with the logical fallacy of its argument: If abortion is not a woman's "own health care," then it must be health care for the fetus. But under no definition of health care—including that advanced by the State—can abortion be considered health care for a fetus.

Fourth, the State argues that the terms "reasonable and necessary" and "undue governmental infringement" do not have their ordinary meaning. Instead, the State urges the Court to find that these terms are "substantially similar" to the terms "rationally related" or "legitimate state objective" as used in the rational-basis legal test. Opp. at 33–34. Not only does the State offer no basis for rewriting Section 38 in this manner, but the State's effort to do so is directly contrary to the plain meaning of the constitution.

To satisfy the rational-basis test, the State must show that a statute is "related to a legitimate government interest." *Hardison v. State,* 2022 WY 45, ¶ 10, 507 P.3d 36, 40 (Wyo. 2022). This test bears no resemblance to the much more exacting requirements of Section 38: that a statute be reasonable and necessary to protect public health and welfare ***and*** not unduly infringe on the right of Wyoming citizens to control their own health care. The language of Section 38 more closely aligns with the strict-scrutiny test, under which the State must show that the statute furthers a

compelling state interest in the least intrusive means available. *Ailport v. Ailport*, 2022 WY 43, ¶ 7, 507 P.3d 427, 433 (Wyo. 2022). A statute that is "necessary" to protect the public health and welfare would surely further a compelling state interest, while avoiding "undue infringement" of the right to control health care is akin to the least intrusive means available to further that state interest.

While the Court should reject the State's attempt to rewrite Section 38, in the end it makes no difference, because the Medication Abortion Ban cannot survive any level of scrutiny. As explained below, the State has not even attempted to explain how the law relates to any legitimate government interest.

4. The State Ignores Plaintiffs' Actual Claims

Not until page 35 of its Opposition does the State make a fleeting effort to justify the Medication Abortion Ban, asserting that it "furthers the State's interest in preserving 'prenatal life at all stages of development.'" Opp. at 35. This claim is, on its face, nonsensical. The Medication Ban does not purport to ban abortion, only the use of medication for otherwise legal abortions. Nowhere does the State attempt to explain how forcing women to undergo surgical abortions, instead of medication abortions, protects prenatal life. Nor is there any such conceivable explanation. This omission is fatal to the State's defense of the Medication Ban, no matter what level of scrutiny applies and regardless of how the Court interprets the terms of Section 38(c) and (d).

In an effort to distract the Court from this fatal omission, the State simply denies that the Plaintiffs have asserted the claims they have asserted or made the showing they have made. First, the State falsely claims—as it has done repeatedly throughout this matter—that all of Plaintiffs' claims are facial challenges to the statute. This assertion is wrong: Plaintiffs claims are ***both*** facial

and as-applied, and the State has no authority to dictate to Plaintiffs what claims they may assert.[1] By failing to respond to Plaintiffs' "as applied" claims, the State has consented to a TRO on those claims.

And as to Plaintiffs' facial claims, the Medication Abortion Ban plainly is unconstitutional on its face. For the reasons set forth in Plaintiffs' motion and supporting papers, there is no circumstance where it is permissible for the State to prohibit a Wyoming woman from using medication for an otherwise legal abortion. While not necessary to any finding that the Medication Abortion Ban is unconstitutional, the evidence submitted by Plaintiffs provides further support for such a finding. This evidence shows that 1) nearly all abortions in Wyoming are medication abortions; 2) even surgical abortions often use medication; 3) medication abortion is often the preferred procedure for a variety of medical and other reasons; 4) there is a shortage of surgical abortion providers in Wyoming; 5) the Medication Ban will make it significantly more difficult for physicians to provide abortion care when medically indicated; 6) the exception for a woman's health is so vague that physicians will not know when it applies; and 7) abortion medication is used for a variety of essential health care procedures. Plaintiffs' Motion for Temporary Restraining Order, Exs. 1 & 2; Ex. 5, Anthony at ¶¶ 10, 14–16, 19 & 21; Ex. 6, Hinkle at ¶¶ 12, 18–24; Ex. 8, Lichtenfels at ¶ 14.

Contrary to the State's assertions, such evidence is admissible and relevant to both a facial and "as applied" challenge to the Medication Abortion Ban. In its opposition, the State focuses

[1] As physicians who care for pregnant women and as women who intend to become pregnant, Plaintiffs have the right to a declaration that the statute is unconstitutional as applied to them. *See* Wyo. Stat. § 1-37-103 (Any person "whose rights, status or other legal relations are affected by the Wyoming constitution or by a statute, municipal ordinance, contract or franchise, may have any question of construction or validity arising under the instrument determined and obtain a declaration of rights, status or other legal relations."); *United States v. Colorado Supreme Ct.*, 87 F.3d 1161, 1166 (10th Cir. 1996) (Plaintiffs "may seek declaratory relief before actual harm occurs if [they] ha[ve] a reasonable apprehension of that harm occurring.")

on whether extrinsic evidence is admissible to prove the legislature's intent. Opp. at 5. Although the cases cited by the State actually do authorize consideration of evidence of this intent under some circumstances, the evidence offered by Plaintiffs on this motion does not go to intent, but instead to the impact of the statute. Evidence of the statute's impact is directly relevant to whether the statute is reasonable, necessary, and/or an undue infringement under Section 38.

The Tenth Circuit has found that evidence of a statute's impact should be considered in a facial challenge to an abortion statute. *Jane L. v. Bangerter,* 102 F.3d 1112, 1117 (10th Cir. 1996). That case involved a facial challenge to a Utah law restricting pre-viability abortions after 20 weeks gestational age. In evaluating this facial challenge, the Tenth Circuit applied the "undue burden" test that previously was controlling law under the US Supreme Court's decision under *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The "undue burden" test is quite similar to the "unduly infringes" language of Section 38. Under the *Casey* standard, a statute imposes an undue burden "if its purpose or effect [was] to place substantial obstacles in the path of a woman seeking an abortion." *Casey*, 505 U.S. at 878.

In applying the undue burden test to plaintiffs' facial challenge to the Utah statute, the Tenth Circuit noted that "[l]legislation is measured for consistency with the Constitution ***by its impact on those whose conduct it affects.***" *Bangerter*, 102 F.3d at 1117 (emphasis added). Consistent with this principle, the Court went on to assess the Utah statute's constitutionality in light of "its impact on the women upon whom it operates." *Id.* In doing so, the Court considered a declaration of the director of the clinic that performed most abortions in Utah discussing the impact of the Utah law on its patients. Based on this evidence, the Tenth Circuit found the Utah

statute impermissibly impacted women and therefore imposed an undue burden in violation of the constitution. *Id.* at 1117–18.[2]

This is precisely the kind of evidence submitted by Plaintiffs in support of their request for a TRO. As noted above, however, even without this evidence, the statute cannot survive any level of scrutiny. Accordingly, the Medication Ban is unconstitutional both on its face and as applied to the Plaintiffs.

Second, rather than respond to the detailed factual and legal showing in Plaintiffs' motion, the State simply denies this showing exists. One by one, the State reviews the arguments advanced by Plaintiffs, and one by one the State asks the Court to "disregard" those arguments. Opp. at 35–38. By refusing to respond to the substance of Plaintiffs' claims, the State effectively concedes that it has no response. This is not surprising, as the Medication Abortion Ban is indefensible. No amount of obfuscation can obscure the fundamental point that there is no possible justification for banning use of medication—and thereby requiring surgery—for otherwise legal abortions.

The Court therefore should reach the same conclusion it already did with respect to the Criminal Abortion Ban: The State's attempt to legislate away the health care rights of pregnant persons in Wyoming is likely to violate the Wyoming Constitution such that a temporary restraining order is appropriate.

B. Plaintiffs Have Proven That They Will Suffer Irreparable Harm Absent Relief

Contrary to the State Defendants' arguments, Plaintiffs have also established that possible irreparable injury will result if the Medication Abortion Ban is permitted to go into effect on July 1, 2023. *CBM Geosolutions*, 2009 WY at ¶ 8, 215 P.3d at 1058. As was true with the Criminal

[2] Although the undue-burden test from *Casey* has been overruled, that does nothing to undermine the Tenth Circuit's holding that evidence of the impact of a statute should be considered in determining whether it impermissibly restricts a woman's constitutional rights.

Abortion Ban that this Court enjoined, the Medication Abortion Ban threatens Plaintiffs with criminal exposure and loss of licensure (Dr. Anthony, Dr. Hinkle, and staff at Circle of Hope), loss of patients and customers (Circle of Hope and Chelsea's Fund), and loss of the constitutional right to make their own health care decisions (Ms. Johnson and Ms. Dow). None of the State's arguments to the contrary have any merit.

First, with regard to Dr. Anthony and Dr. Hinkle, the State argues that there is no possible irreparable injury because they lack standing to challenge the Medication Abortion Ban. *See* State Opp. at 41. But the State's own Opposition brief belies this argument. On the one hand, the State argues that Dr. Anthony and Dr. Hinkle "lack standing" because "a statute may only be questioned by a party whose rights are affected thereby" and neither physician, in the State's view, will suffer injury "to her own constitutionally protected right." Opp. at 41. Yet, the State also concedes, as it must, that "[a]ny physician or other person who violates [the Medication Abortion Ban] is guilty of a misdemeanor." Opp. at 9.

This concession dooms the State's position as the Tenth Circuit has explained "that a plaintiff establishes standing when 'a credible threat of prosecution or other consequences follow from the statute's enforcement' is shown." *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1229 (10th Cir. 2005) (quoting *D.L.S. v. Utah*, 374 F.3d 971, 975 (10th Cir. 2004)). There is no question that Dr. Anthony and Dr. Hinkle (as well as the physicians and other staff at Circle of Hope) are threatened with prosecution if they continue to provide evidence-based medical care to their patients after the Medication Abortion Ban goes into effect. *See* Ex. 5, Anthony, ¶ 37 ("If I were to continue to provide a woman with advice and care, as I am licensed to do, I would risk criminal sanctions punishable by a prison sentence and fines."); Ex. 6, Hinkle, ¶ 27 (same).

Nor is there any doubt that Dr. Anthony and Dr. Hinkle regularly prescribe and advise clients on these abortion medications in their regular practices. *See* Ex. 5, Anthony, ¶¶ 9–10, 14–

16; Ex. 6, Hinkle, ¶¶ 10–13. Thus, the risk of criminal prosecution is not an illusory one, but a very real risk that both physicians face if the Medication Abortion Ban goes into effect. This loss of liberty establishes a likely (not just possible) irreparable harm. *See* TRO Order at ¶ 60.

Moreover, Dr. Anthony and Dr. Hinkle will possibly lose their livelihoods if the Medication Abortion Ban is not enjoined. The State's attempts to parse their affidavits to argue that they will not lose their businesses (*see* Opp. at 42) is misplaced: if Dr. Anthony and Dr. Hinkle experience "the loss of their ability to practice medicine in the event of misapplying the allegedly unclear exceptions when treating a patient," that will result in a loss of their business to "satisfy the element of irreparable harm." TRO Order at ¶ 60 (citing *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 304 F. Supp. 2d 1278, 1278 (D. Wyo. 2004)). Dr. Anthony and Dr. Hinkle both testified to this risk in their affidavits and have therefore established this possible irreparable harm. *See* Ex. 5, Anthony, ¶ 37 ("As a result, I would lose my license and my ability to continue work[ing] as a medical professional."); Ex. 6, Hinkle, ¶ 27 ("If I lose my license as a result of a criminal conviction (which the Medication Abortion Ban allows), I would be unable to practice medicine in any state in the United States, even if the medical care I provided was legal in that state.").

Second, the State also asserts that Circle of Hope and Chelsea's Fund lack standing and therefore cannot satisfy the irreparable harm standard. Opp. at 42–43. Again, that is contrary to this Court's prior TRO Order and ignores the affidavit evidence. As the Court previously concluded as to the Criminal Abortion Ban, these regulations on medical abortion care "will significantly drain the organizational finances of Chelsea's Fund due to the expenses associated with securing out-of-state travel for clients needing abortion" and will likewise "undermine[] Circle of Hope's intended and advertised service of providing primary care including medicated and surgical abortion in a region of Wyoming that is not currently served." TRO Order at ¶ 61. The same is true here, as the Medication Abortion Ban functionally eliminates abortion in

Wyoming by making it illegal to obtain any medication for abortion—which is how all abortions except one have been performed since 2019. *See* Ex. 2, 2021 ITOP Report, at Table 4.

While Circle of Hope is operating a clinic in Casper that will serve as the only provider of surgical abortions in Wyoming, it also intends to serve roughly 325 patients a year through medication abortions. Ex. 7, Burkhart, ¶ 10. Accordingly, "[a]s a result of the Medication Abortion Ban, at least half of the abortion care [Circle of Hope's clinic] exist[s] to provide—medication abortion—will be illegal" and it "will be unable to serve [its] patients and fulfill [its] mission to provide abortion care to Wyomingites." *Id.* ¶ 11. This will mean a loss of goodwill in the community and a loss of patients. *Id.* Similarly, Chelsea's Fund will face "significant organizational and financial burdens" resulting from the dramatic increase in the need for its constituents to travel for in-person medical care in other states because of Wyoming's ban on even filling a prescription for an abortion medication within Wyoming. Ex. 8, Lichtenfels, ¶ 18. These increased burdens are "a particular threat to the long-term existence and health of Chelsea's Fund." *Id.* ¶ 19.

In addition, both Circle of Hope and Chelsea's Fund have standing to represent the interests of the patients and clients they exist to serve. *See* Ex. 9 to TRO (*Planned Parenthood Nw. v. Members of the Med. Licensing Bd. of Indiana*, No. 53C06-2208-PL-001756, at ¶¶ oo-pp (Ind. Cir. Ct. Sept. 22, 2022) (organizations have standing to represent the interests and irreparable harms of their clients)); *see also* Ex. 8, Lichtenfels, ¶ 20 ("The Medication Abortion Ban will have significant and immediate impacts on Chelsea's Fund's clients, who Chelsea's Fund was created to serve and represent.").

As Plaintiffs' affidavit evidence all demonstrated, Wyomingites who are served by Circle of Hope's clinic in Casper or by the funding and services offered by Chelsea's Fund are harmed by the Medication Abortion Ban because they will not be able to obtain the medical care that these

organizations facilitate in Wyoming. *See, e.g.*, Ex. 5, Anthony, ¶¶ 11–13, 17–36; Ex. 6, Hinkle, ¶¶ 14–26; Ex. 7, Burkhart, ¶¶ 12–13, 16–17; Ex. 8, Lichtenfels, ¶¶ 10–17. Accordingly, these Wyomingites will face irreparable health risks and financial impacts stemming from the lack of available care in their communities that Circle of Hope and Chelsea's Fund have standing to represent. *See Northfork Citizens for Responsible Dev. v. Park Cnty. Bd. of Cnty. Comm'rs*, 2008 WY 88, ¶ 8, 189 P.3d 260, 261 (Wyo. 2008) (holding an organization had standing because some of its individual members did); *Hageman v. Goshen Cnty. Sch. Dist. No. 1*, 2011 WY 91, ¶ 4, 256 P.3d 487, 491 n.1 (Wyo. 2011) (holding a coalition had standing because two of its individual members did).

Third, while the State does not contend that Ms. Johnson or Ms. Dow lack standing to challenge the law, it mistakenly argues that the risks to them from its enforcement are too attenuated to support injunctive relief. As this Court previously recognized, Ms. Johnson and Ms. Dow will suffer irreparable harm by being denied their constitutionally protected right to make their own health care decisions under Section 38. The State contends that the Court did not find this loss of choice around their future medical care sufficient in its prior TRO Order, but that is false. As the Court rightly concluded:

> "[T]he affidavit testimony of both Ms. Johnson and Ms. Dow verify that each desire to have additional children while residing in Wyoming. Under the Act, when Ms. Johnson and Ms. Dow become pregnant, their constitutional right to make their own health care decisions will be denied for the entire duration of their pregnancy. The loss of their constitutional right constitutes an impending future injury that is irreparable."

TRO Order at ¶ 59. The same is true here, as Plaintiffs have demonstrated the same facts regarding Ms. Johnson and Ms. Dow's intentions to become pregnant in Wyoming (Ex. 3, Johnson, ¶¶ 11–12; Ex. 4, Dow, ¶¶ 7, 12) and the impact that the Medication Abortion Ban will have on their rights to make medical decisions during the pendency of those future pregnancies (Ex. 3, Johnson, ¶¶ 13–18; Ex. 4, Dow, ¶¶ 13–17).

As a result, the Plaintiffs have again shown that they each will suffer an irreparable injury if the Medication Abortion Ban is not enjoined through a TRO.

III. CONCLUSION

Plaintiffs respectfully request that this Court grant Plaintiffs' motion and issue a temporary restraining order enjoining the Defendants from enforcing the Medication Abortion Ban until the Court makes an order dissolving the injunction.

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DATED this 9th day of June 2023.

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CERTIFICATE OF SERVICE

THIS IS to certify on this 8th day of June 2023, a true and correct copy of the foregoing was served as follows:

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RESPECTFULLY SUBMITTED this 9th day of June 2023.

FOR:

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