

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING  
NINTH JUDICIAL DISTRICT**

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

**FILED**  
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SEP 19 2023  
DANIELLE JOHNSON  
DISTRICT COURT  
9TH JUDICIAL DISTRICT  
TETON COUNTY WYOMING

**ORDER GRANTING MOTION FOR  
TEMPORARY RESTRAINING ORDER—Wyo. Stat. § 35-6-139**

This matter came before the Court for a hearing on June 22, 2023 on the Plaintiffs' Motion for Temporary Restraining Order Against Enforcement of Medication Abortion Ban (Motion for TRO). Marci Bramlet, Megan Cooney, John Robinson, and Peter Modlin appeared for the Plaintiffs. Jay Jerde appeared for Defendants, the State of Wyoming, the Governor of Wyoming, and the Wyoming Attorney General (State Defendants). Erin Weisman appeared for the Teton County Sheriff. Carly Anderson appeared for the Town of Jackson Chief of Police.

**PROCEDURAL BACKGROUND**

Plaintiffs' motion is filed pursuant to Wyo. Stat. §§ 1-28-101 to 1-28-111 and W.R.C.P. 65. Plaintiffs request an entry of a temporary restraining order enjoining the enforcement of Senate Enrolled Act Number 93 (SF 109) as enacted under Wyo. Stat. § 35-6-139 and effective

July 1, 2023. Plaintiffs filed their Motion for TRO on May 10, 2023. The State Defendants filed a response on May 25, 2023. Plaintiffs filed a reply on June 9, 2023.

Last spring, the Plaintiffs successfully sought a temporary restraining order enjoining the enforcement of the Life as a Human Right Act (Act) enacted under Wyo. Stat. §§ 35-6-120 to 35-6-138. The Court granted the temporary restraining order finding that the Plaintiffs satisfied their burden to establish a clear showing of probable success and possible irreparable injury. The Court focused its analysis of probable success on Wyo. Const. art. 1, § 38 and the right it confers on Wyomingites to access health care.

Next, Plaintiffs moved for a temporary restraining order enjoining the enforcement of Wyo. Stat. § 35-6-139 prior to it taking effect. Wyo. Stat. § 35-6-139 is Wyoming's new law that prohibits medication abortions. At the conclusion of the hearing, the Court granted the Plaintiffs' Motion for TRO effective immediately. The Court enters this written Order to fully identify its findings for the record.

### **LEGAL STANDARDS**

1. **Temporary Restraining Orders.** Temporary restraining orders and injunctions are controlled by Wyo. Stat. § 1-28-102 and W.R.C.P. Rule 65. Wyo. Stat. § 1-28-102 states 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 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.

2. Plaintiffs have the burden to establish a clear showing of probable success and possible irreparable injury. *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶ 8, 215

P.3d 1054, 1057 (Wyo. 2009) (citing *Greater Yellowstone Coalition v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2002)). In *CBM Geosolutions, Inc.*, the Wyoming Supreme Court has explained:

The purpose of a temporary injunction is to preserve the status quo until the merits of an action can be determined. And a temporary injunction rests upon an alleged existence of an emergency, or a special reason for such an order, before the case can be regularly heard.

Also, the 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.

In granting temporary relief by interlocutory injunction courts of equity do not generally anticipate the ultimate determination of the questions of right involved. They merely recognize that a sufficient case has been made out to warrant the preservation of the property or rights in issue *in status quo* until a hearing upon the merits, without expressing, and indeed without having the means of forming a final opinion as to such rights.

2009 WY at ¶ 7, 215 P.3d at 1057 (citations omitted).

3. When issuing a TRO, the Court must address the issue of a bond. W.R.C.P. 65(c) states in pertinent part:

(c) *Security*. –The court may issue a . . . temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

### **LEGAL ANALYSIS**

4. Status Quo. Temporary restraining orders preserve the status quo until the merits of a case can be decided. Thus, the Court must identify the status quo to be preserved. The definition of status quo is “the existing state of affairs.” *In re Kite Ranch, LLC v. Powell Family of Yakima, LLC*, 2008 WY 39, ¶ 29, 181 P.3d 920, 928 (Wyo. 2008) (citing Webster’s Third New Int’l Dictionary 2230 (2002)). The Tenth Circuit has “explained that the status quo is the ‘last uncontested status

between the parties which preceded the controversy until the outcome of the final hearing.”  
*Schrier v. University of Co.*, 427 F.3d 1253, 1260 (10<sup>th</sup> Cir. 2005) (quotations omitted) (emphasis added). A court would look to the “last peaceable uncontested status existing between the parties before the dispute developed.” *Id.* (quoting 11a Wright & Miller, Fed. Prac. & Proc. § 2948).

5. Prior to enacting Wyo. Stat. § 35-6-139, it was permissible to prescribe, dispense, distribute, sell or use prescription medications for the purposes of procuring or performing an abortion. The Court finds and concludes that the status quo in this matter is situated at the point in time where Wyoming permitted the use of medication abortions prior to the enactment of Wyo. Stat. § 35-6-139.
6. Probable Success. The Wyoming Supreme Court has acknowledged that one factor that courts must consider is probable success. *CBM Geosolutions, Inc.*, 2009 WY at ¶ 8, 215 P.3d at 1057–58. In the context of a temporary restraining order, the court merely recognizes that a sufficient case has been made. *Id.* at ¶ 7, 1057. Plaintiffs seek declaratory judgment that Wyo. Stat. § 35-6-139 violates Plaintiffs’ right make their own health care decisions, free from undue government influence pursuant to Wyo. Const. art. 1, § 38.
7. Wyoming’s Right to Health Care Access provides:
  - (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.

Wyo. Const. art. 1, § 38.

8. Under Wyo. Stat. § 35-6-139, the Wyoming Legislature makes it unlawful to “prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person.” Wyo. Stat. § 35-6-139 incorporates some exceptions. Those exceptions include use of the medication: (1) as a contraceptive agent before conception; (2) to treat a natural miscarriage; (3) when necessary to preserve a woman from an imminent peril that substantially endangers her life or health; and (4) for an abortion when the pregnancy is a result of incest or sexual assault.
9. The vast majority of abortions in Wyoming are medication abortions. According to the Wyoming Department of Health, in 2019 and 2021, 100% of all Wyoming abortions were medication abortions. In 2020, 97% of all Wyoming abortions were medication abortions. Additionally, the medications prescribed for medication abortions are also prescribed and used for all abortion procedures. It appears that Wyo. Stat. § 35-6-139 would preclude almost all abortions in Wyoming, would eliminate the ability of physicians to utilize appropriate medications while performing abortions, and would require a woman to utilize a more invasive medical procedure to obtain an abortion even when a medication abortion is the appropriate medical procedure. Each of these factors suggest that Wyo. Stat. § 35-6-139 would deny pregnant women access to health care, increase risks for women requiring an abortion, and deny women the right to make their own health care decisions.
10. This Court previously found the Plaintiffs made a sufficient showing that they are substantially likely to succeed on establishing that Wyo. Stat. §§ 35-6-120 to 35-6-138 are unconstitutional

under Article 1, § 38. The Court reasoned that all Wyoming citizens have a right to make their own health care decisions which includes the decision to have an abortion. The Court found that the Act appeared to unreasonably suspend this right for pregnant Wyoming women throughout the entire duration their pregnancies. The Court focused on the fact that the Act suspended these rights even at the earliest stages of embryonic development.

11. If a law that suspends the right of a pregnant woman to obtain an abortion throughout the entire duration of their pregnancy is substantially likely to be found unconstitutional, a law that suspends the right of a pregnant woman from receiving a medication abortion during the earliest stages of her pregnancy is likewise substantially likely to be found unconstitutional. The Court finds that the Plaintiffs have asserted a sufficient showing of probable success to warrant enjoining Wyo. Stat. § 35-6-139 until this matter can be fully resolved on its merits.

12. Possible Irreparable Harm. Next, the Court must address whether the Plaintiffs have established a possibility of irreparable harm. “Irreparable harm is, by definition, harm for which there can be no adequate remedy at law.” *CMB Geosolutions*, 2009 WY at ¶ 10, 215 P.3d at 1058. An injury is irreparable where monetary compensation cannot atone for it. *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328, 332 (Wyo. 1986).

Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Sampson v. Murray*, 415 U.S. 61, 90 (1974).

13. The Court finds that the Plaintiffs have established a possibility of irreparable harm. Wyo. Stat. § 35-6-139 threatens immediate and irreparable harm to the rights of women to access health

care in Wyoming and make their own health care decisions. This Court has previously relied on case law in the Tenth Circuit holding that a loss of constitutional rights, even for a short period of time, unquestionably constitutes irreparable injury under the temporary restraining order analysis. *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673 (1976); *Free the Nipple-Fort Collins v. City of Fort Collins, CO*, 916 F.3d 792, 806 (10th Cir. 2019) (citations omitted) (holding that an ordinance criminalizing topless women violated the Equal Protection Clause such that the Plaintiff need not show any further irreparable harm).

14. The implementation of Wyo. Stat. § 35-6-139 prohibits almost all abortions in Wyoming. As a result, the right of Wyoming women to make medical decisions and access health care would be denied. The Court therefore finds that Plaintiffs Ms. Johnson and Ms. Dow have satisfied the irreparable harm prong. Having found that Plaintiffs Ms. Johnson and Ms. Dow have sufficiently established the possibility of irreparable harm, the Court need not evaluate the potential irreparable harm to the remaining Plaintiffs in this action.

15. Bond. Pursuant to W.R.C.P. 65(c), the Court may only issue a temporary restraining order “if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Plaintiffs seek a temporary restraining order without bond. Defendants do not object. “If the district court finds no likelihood of harm to the defendant, no bond is necessary.” *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶ 98, 275 P.3d 438, 466 (Wyo. 2012). Defendants do not contend that a bond is necessary with the entry of a temporary restraining order. The Court therefore finds that no bond is required pursuant to W.R.C.P. 65(c).

16. Under these circumstances, the Court finds that the temporary restraining order should issue.

**IT IS ORDERED** that Plaintiffs' Motion for Temporary Restraining Order is **GRANTED**. The Court temporarily **ENJOINS AND RESTRAINS** Defendants, their officers, employees, servants, agents, attorneys, appointees, successors, or any persons who are in active concert or participation with the Defendants from enforcing Wyo. Stat. § 35-6-139. This Temporary Restraining Order is effective as of June 22, 2023, and shall remain in effect until dissolved or modified by Court order.

**IT IS FURTHER ORDERED** that this Order shall be entered without the Plaintiffs providing security pursuant to W.R.C.P. Rule 65(c).

**IT IS FURTHER ORDERED** that Defendants shall provide a copy of this Temporary Restraining Order to all county and municipal prosecutors.

DATED this 19<sup>th</sup> day of September, 2023.

1810  
Melissa M. Owens  
District Court Judge

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served by mail/fax upon the following persons at their last known address this 19 day of Sept 2023.

Robison Bramlett fax  
Madison Carney c/o Bramlett fax  
clerke fax  
Colasuanu fax

Nasman email  
Harrison courtesy copy fax  
Harle Garrison c/o Harrison courtesy copy fax

By: [Signature]