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WY Teton County District
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FILED

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

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

DANIELLE JOHNSON; KATHLEEN DOW;)
GIVOANNINA ANTHONY, M.D.; RENE R.)
HINKLE, M.D.; CHELSEA'S FUND; and)
CIRCLE OF HOPE HEALTHCARE d/b/a)
Wellspring Health Access;)

Plaintiffs,)

v.)

Civil Action No. 18853

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.)

**STATE DEFENDANTS' REQUEST FOR THIS COURT
TO TAKE JUDICIAL NOTICE OF LEGISLATIVE FACTS**

Defendants, State of Wyoming, Wyoming Governor Mark Gordon, and Wyoming
Attorney General Bridget Hill (State Defendants), hereby ask this Court to take judicial

notice of the following legislative facts cited in their memorandum of law in response to Plaintiffs' motion for summary judgment and in support of the State Defendants' cross-motion for summary judgment:

1. SJ0002 (2011) Floor Debate Audio Files (available on the Wyoming Legislature website)

Senate

Committee of the Whole
January 27, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/senate/s0127am1.mp3>)

Begin: 59:11
End: 2:00:53

Committee of the Whole
January 28, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/senate/s0128am1.mp3>)

Begin: 25:00
End: 1:19:31

Second Reading
January 31, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3>)

Begin: 33:31
End: 1:03:33

Third Reading
February 1, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/senate/s0201am1.mp3>)

Begin: 37:05
End: 1:16:15

House

Committee of the Whole
February 11, 2011 (Afternoon Session)
(<https://wyoleg.gov/2011/Audio/house/h0211pm1.mp3>)

Begin: 1:14:35
End: 1:40:20

Second Reading
February 14, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/house/h0214am1.mp3>)

Begin: 21:56
End: 26:30

Third Reading
February 15, 2011 (Morning Session)
(<https://wyoleg.gov/2011/Audio/house/h0215am1.mp3>)

Begin: 38:20
End: 1:11:19

2. HB0152 (2023) Committee and Floor Debate Video Files (available on the Wyoming Legislature website)

House

Committee of the Whole
February 6, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=ynn-N0JNa48>)

Begin: 1:53:02
End: 3:26:26

Second Reading
February 7, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=nPaQvNKOV1w>)

Begin: 51:46
End: 1:51:56

Third Reading
February 8, 2023 (Afternoon Session)
(https://www.youtube.com/watch?v=I2QnmZ_h_vk)

Begin: 1:18:19
End: 2:34:10

Senate

Committee of the Whole
February 27, 2023 (Afternoon)
(https://www.youtube.com/watch?v=8O2bRdO_F5U)

Begin: 57:41
End: 2:30:52

Second Reading
February 28, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=TC-N3-V7opU>)

Begin: 23:21
End: 1:29:00

Third Reading
March 1, 2023 (Afternoon Session)
(<https://www.youtube.com/watch?v=fQ2UG-woR0M>)

Begin: 1:19:20
End: 1:52:15

3. SF0109 (2023) Committee and Floor Debate Video Files (available on the Wyoming Legislature website)

Senate

Committee of the Whole
January 25, 2023 (Afternoon Session)
(<https://www.youtube.com/watch?v=J2s8Wp8HLCI>)

Begin: 2:55:15
End: 3:18:19

Second Reading
January 26, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=jYQC6OGYxlg>)

Begin: 19:06
End: 19:25

Third Reading
January 27, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=q9H4fY7ryXk>)

Begin: 2:26:54
End: 2:59:50

House

Standing Committee (Revenue)
February 23, 2023
(https://www.youtube.com/watch?v=3LuQ25TU8Fg&list=PLOhkcX5d91No8QiqW5_bV4cv-NmKO3DQs&index=43 9)

Begin: 1:27:39
End: 2:44:28

Committee of the Whole
February 27, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=Izg4BoY095M>)

Begin: 1:46:55
End: 2:52:34

Second Reading
February 28, 2023 (Morning Session)
(<https://www.youtube.com/watch?v=NFkcF078IM0>)

Begin: 31:48
End: 36:48

Third Reading
March 1, 2023 (Afternoon Session)
(<https://www.youtube.com/watch?v=XO66gzYSJaU>)

Begin: 1:44:00

End: 1:47:12

4. Wyoming Bills, Enrolled Acts, and Related Information

House Enrolled Act 88 (2023) (Ex. A)

Senate Enrolled Act 93 (2023) (Ex. B)

Senate Joint Resolution No. 0002 (introduced version)

<https://wyoleg.gov/2011/Introduced/SJ0002.PDF>

House Bill No. 00035 (2011)

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

House Bill No. 00039 (2011)

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

Senate Joint Resolution 0003 (2011)

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

House Joint Resolution 0009 (2011)

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

House Bill No. 92 (2022)

<https://wyoleg.gov/2022/HB0092>

House Bill No. 152 (2023) (introduced version)

<https://wyoleg.gov/2023/Introduced/HB0152.pdf>

House Bill No. 152 (2023) (engrossed version)

<https://wyoleg.gov/2023/Engross/HB0152.pdf>

Senate File No. 109 (2023) (introduced version)

<https://wyoleg.gov/2023/Introduced/SF0109.pdf>

Journal of the Senate of the Sixty-First Legislature of Wyo. 294-300 (Gen. Sess. Jan. 11, 2011, through March 3, 2011).

Journal of the House of Representatives of the Sixty-Sixth Legislature of Wyo. 243 (Budget Sess. Feb. 14, 2022 through March 11, 2022)

Journal of the House of Representatives of the Sixty-Seventh Legislature of Wyo. 280-85 (Gen. Sess. Jan. 10, 2023, through March 3, 2023)

Journal of the Senate of the Sixty-Seventh Legislature of Wyo. 195-96 (Gen. Sess. Jan. 10, 2023, through March 3, 2023)

5. The Debates on the Wyoming Constitution

Journal and Debates of the Constitutional Convention of the State of Wyoming App. at 58, 154, 156, 198, 212, 249, 587, 751 (1893).

6. Materials Considered During the Constitutional Convention

S. 2445 (50th Congress, 2d Session)

7. Historical information about the Wyoming Constitution

T.A. Larson, *History of Wyoming* 66, 238, 246-47, 256, 259 (Univ. of Neb. Press 1965)

8. Legal Treatises

Robert B. Keiter, *The Wyoming State Constitution* 45, 88-89, 108, 110, 219, 331, 337 (2d ed. 2017)

Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 35 (1868)

9. Unpublished thesis on the Wyoming Constitution

Richard K. Prien, *The Background of the Wyoming Constitution* 48, § III at 18 (Aug. 1956) (unpublished M.A. Thesis, Univ. of Wyo.)

10. Information from the Wyoming Secretary of State website

Information about the 2012 ballot issues

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

The Secretary of State 2012 voter's guide

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

12. Magazine, Newspaper, or Website Articles

“Wyoming voters will get a say on Obamacare mandate”

Wyoming Tribune Eagle October 7, 2012

https://www.wyomingnews.com/news/wyoming-voters-will-get-a-say-on-obamacare-mandate/article_bd915991-9623-53f2-a2fb-c13f8bdd6021.html

“Ballot Initiative of the Day: Will Wyoming Resist Obamacare?”

Time Magazine website October 31, 2012

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

“2012 constitutional amendments: pro and con”

Casper Star Tribune voter guide at G17 November 4, 2012

“Wyoming Residents Have Mixed Views On Health Care Changes”

University of Wyoming news November 16, 2012

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

Allison Connelly, *A Sleeping Giant: § II of the Kentucky Bill of Rights*, 14 The Advocate Newsletter 115 (June 1992)

https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1026&context=law_facpub_pop

13. Information from the Cleveland Clinic website

Information page about preeclampsia

<https://my.clevelandclinic.org/health/diseases/17952-preeclampsia>

14. Any Other Legislative Facts Cited in the State Defendants’ Combined Legal Memorandum

If the State Defendants inadvertently omitted any legislative facts cited in their Combined Legal Memorandum in Response to Plaintiffs’ Motion for Summary Judgment and in Support of State Defendants’ Cross-Motion for Summary Judgment, the State Defendants request that this Court take judicial notice of those facts.

Legal Authority

Legislative facts “are the general facts which help the tribunal decide questions of law and policy and discretion.” *Foster’s Inc. v. City of Laramie*, 718 P.2d 868, 878 (Wyo.

1986) (Rose, J., specially concurring) (citation omitted); *see also McGrath v. Univ. of Alaska*, 813 P.2d 1370, 1374 (Alaska 1991) (same); *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 767 (Iowa 1998) (same); *Lee v. Martinez*, 96 P.3d 291, 296 (N.M. 2004) (same). The advisory committee notes for Rule 201 of the Federal Rules of Evidence describes “legislative facts” as “those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body.” Fed. R. Evid. 201 (advisory comm. note to subsection (a) in the 1972 proposed rule). Legislative facts “are facts only in the sense that they provide premises in the process of legal reasoning.” *See Atlantic Richfield Co. v. State*, 705 P.2d 418, 428 (Alaska 1985).

Sources of legislative facts include “legislative history,” “medical literature,” and “existing social, economic, and political conditions,” among “many other things.” Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 2:12 (4th ed., July 2022 update); *see also Wyman v. Wallace*, 615 P.2d 452, 454 (Wash. 1980) (en banc) (noting that a court may take judicial notice of legislative facts in the form of “scholarly works, scientific studies, and social facts”); *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012).

A reviewing court typically takes judicial notice of legislative facts. Mueller & Kirkpatrick, *Federal Evidence* § 2:12. In Wyoming, a court may take judicial notice of legislative facts. *See, e.g., Mountain Fuel Supply Co. v. Emerson*, 578 P.2d 1351, 1355 n.4 (Wyo. 1978) (taking judicial notice of facts in a “yearbook” published by the State of Wyoming). In doing so, Rule 201 of the Wyoming Rules of Evidence does not apply. *Cf.*

Id. (explaining why legislative facts are outside the scope of Rule 201 in the Federal Rules of Evidence).

Legislative facts usually are established by material cited in or submitted with the briefs. *Daggett v. Comm'n on Governmental Ethics & Election Pracs.*, 172 F.3d 104, 112 (1st Cir. 1999). “[L]egislative facts may be presented either formally or informally, and neither the trial court which first considers such matters nor an appellate court on review is limited by the rules of admissibility and the standards of review that apply to disputed issues of adjudicative fact.” *Welsh v. Branstad*, 470 N.W.2d 644, 648 (Iowa 1991).

This Court may take judicial notice of all of the facts listed above because: (1) all of the facts are legislative facts; and (2) all of the issues in this case involve questions of law regarding the constitutionality of the Life if a Human Right Act and the chemical abortion statute. Neither Rule 201 of the Wyoming Rules of Evidence nor other evidentiary rules preclude the taking of judicial notice of these legislative facts. Mueller & Kirkpatrick, *Federal Evidence* § 2:12; *Welsh*, 470 N.W.2d at 648.

For the foregoing reasons, the State Defendants ask this Court to take judicial notice of the legislative facts from the sources identified in paragraphs 1 through 14 in this request.

DATED this 5th day of October 2023.

/s/Jay Jerde

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2023, a true copy of the foregoing was served via email, and mailed, postage prepaid, to the following:

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