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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. )

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**STATE DEFENDANTS' RULE 56.1 STATEMENT  
OF UNDISPUTED MATERIAL FACTS**

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As required by Rule 56.1(a) of the Wyoming Rules of Civil Procedure, Defendants  
State of Wyoming, Wyoming Governor Mark Gordon, and Wyoming Attorney General

Bridget Hill (the State Defendants) hereby submit their statement of material facts as to which there are no genuine issue to be tried:

1. From 1869 to 1884, a Wyoming statute prohibited and criminalized abortion. Gen. Laws Terr. of Wyo., ch. 3, Title 1, § 25 (1869)); Wyo. Rev. Stat. § 879 (1887).

2. From 1884 to 1973, a Wyoming statute prohibited and criminalized abortion subject to one exception that permitted abortion to preserve the life of the pregnant woman. Wyo. Rev. Stat. § 879 (1887); Wyo. Rev. Stat. § 4969 (1899); Wyo. Stat. § 6-77 (1957).

3. From 1977 to 2022, a Wyoming statute did not prohibit abortion before viability, but prohibited and criminalized 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).

4. From 2022 to 2023, one Wyoming statute prohibited abortion “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,” while another Wyoming statute made it a crime to violate the abortion prohibition statute. Wyo. Stat. Ann. § 35-6-102(b) (2022); Wyo. Stat. Ann. § 35-6-110 (1977).

5. In 2023, House Enrolled Act Number 88 repealed Wyo. Stat. Ann. §§ 35-6-102(b) and 35-6-110. (Ex. A, §5).

6. In 2023, the Wyoming Legislature enacted the Life is Human Right Act, which generally prohibits abortion but allows for a pregnancy to be ended in specified circumstances. (Ex. A, § 1); Wyo. Stat. Ann. § 35-6-120 through -138.

7. In 2023, the Wyoming Legislature enacted the chemical abortion statute (Wyo. Stat. Ann. § 35-6-139), which prohibit the prescribing, dispensing, distributing, selling, or using of “any drug for the purpose of procuring or performing an abortion on any person,” subject to specific exceptions. (Ex. B, § 1); Wyo. Stat. Ann. § 35-6-139.

8. Abortion is not deeply rooted in the history and tradition of this country and is not implicit in ordered liberty. *Dobbs v. Jackson Women’s Health Organization*, — U.S. —, —, 142 S. Ct. 2228, 2242 (2022).

9. The Wyoming Constitution does not explicitly confer a right to abortion. *See generally* Wyoming Constitution.

10. Plaintiffs ask this Court to declare that the Life Act and the chemical abortion statute are unconstitutional and “are therefore invalid and unenforceable[.]” (Am. Compl. at ¶ xliii) (alteration added).

11. Plaintiffs ask this Court to issue a permanent injunction preventing the State Defendants from enforcing the Life Act and the chemical abortion statute “with respect to any abortion[.]” (Am. Compl. at ¶ xliv) (alteration added).

12. Plaintiffs ask this Court to enjoin enforcement of the Life Act and the chemical abortion statute as against everyone who may be subject to it. (*See* Pls’ Summ. J. Mem. at 2-3, 85, 86).

13. In the Senate, several senators had concerns that the introduced version of SJ0002, with the amendments suggested by the Senate Judiciary Committee, was too long, had too many words, or was too complicated.

(<https://wyoleg.gov/2011/Audio/senate/s0128am1.mp3> (at 25:00 to 1:19:31)).

14. In response to those concerns, the Senate adopted an amendment proposed by Senator Schiffer (SJ0002SW001) that replaced the seven subsections in the introduced version of SJ0002 with one sentence. (Ex. C - *Journal of the Senate of the Sixty-First Legislature of Wyo.* 295-296 (Gen. Sess. Jan. 11, 2011, through March 3, 2011)).

15. The proposed language that became section 38 (with minor changes) was introduced by Senator Perkins as an amendment during second reading. (Ex. C - *2011 Senate Journal* 297-98).

16. 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 receive (or to not receive) health care services and the freedom to choose how to pay for such services.

(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3> (at 33:31 to 1:03:33)).

17. The debate during second reading shows that the Perkins amendment was not intended to give adults in Wyoming an unrestricted right to make health care decisions.

(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3> (at 33:31 to 1:03:33)).

18. The debate during second reading shows that the proposed section 38(c) was intended to maintain the Legislature's authority to regulate the practice of medicine in Wyoming to protect Wyoming citizens.

(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3> (at 33:31 to 1:03:33)).

19. The Perkins amendment replaced the Schiffer amendment that would have allowed the Wyoming Legislature to define the extent of the right conferred by section 38. (Ex. C - *2011 Senate Journal* 296).

20. Some senators believed that the Schiffer amendment deprived the proposed constitutional right of any real meaning.

(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3> (at 33:31 to 1:03:33)).

21. The debate on second reading shows that the Perkins amendment was intended to balance the individual adult's right to make health care decisions with the Legislature's traditional role in regulating the practice of medicine in this state.

(<https://wyoleg.gov/2011/Audio/senate/s0131am1.mp3> (at 33:31 to 1:03:33)).

22. In 2012, the Wyoming Secretary of State distributed a "voter's guide."  
(<https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>).

23. The Secretary of State voter's guide described the proposed section 38 by repeating verbatim the endorsement language from the general election ballot.  
(<https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>).

24. The Secretary of State voter's guide 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.  
(<https://sos.wyo.gov/Elections/Docs/2012/2012BallotIssues.pdf>).

25. 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.”  
(Ex. D).

26. The newspaper voter guide also described proposed section 38 as “an attempt to remove Wyoming from the effects of the Patient Protection Affordable Care Act passed by Congress.” (Ex. D).

27. Each ballot for the 2012 general election in Wyoming included the following endorsement language regarding the proposed amendment:

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).

28. 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 – House Bill No. 00035 (2011) (to create a state health care choice and protection act as an alternative to the Affordable Care Act) and House Bill No. 00039 (2011) (to create a fund to pay for litigation against federal health care enactments, primarily the Affordable Care Act).

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

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

29. During the 2011 legislative session, two other joint resolutions to amend the Wyoming Constitution to address health care freedom were introduced.

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

30. During the 2012 legislative session, the Wyoming 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). 2012 Wyo. Sess. Laws 241-42.

31. A November 2012 poll conducted by the University of Wyoming showed that 66% of the individuals surveyed disapproved of the Affordable Care Act.  
(<https://www.uwyo.edu/uw/news/2012/11/wyoming-residents-have-mixed-views-on-health-care-changes.html>).

32. The pollster attributed the high rate of disapproval to “general attitudes concerning the federal government[.]”  
(<https://www.uwyo.edu/uw/news/2012/11/wyoming-residents-have-mixed-views-on-health-care-changes.html>).

33. In the weeks before the 2012 general election, one national news magazine characterized the proposed section 38 as an attempt “to let individuals sidestep” the Affordable Care Act.  
(<https://swampland.time.com/2012/10/31/ballot-initiative-of-the-day-will-wyoming-resist-obamacare/>)

34. In the weeks before the 2012 general election, 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. (Ex. E).

35. Religion was discussed during the debates on the Life Act, primarily during Committee of the Whole in the House of Representatives and Committee of the Whole in the Senate.

(<https://www.youtube.com/watch?v=ynn-N0JNa48> (House of Representatives))  
(at 1:53:02 to 3:26:26)

([https://www.youtube.com/watch?v=8O2bRdO\\_F5U](https://www.youtube.com/watch?v=8O2bRdO_F5U) (Senate)) (at 57:41 to 2:30:52)

36. During the debate, a few legislators expressed a concern that the Life Act violated the religion provisions in the Wyoming Constitution, while many others stated that the bill was not based on any religious view.

(<https://www.youtube.com/watch?v=ynn-N0JNa48> (House of Representatives))  
(at 1:53:02 to 3:26:26)

([https://www.youtube.com/watch?v=8O2bRdO\\_F5U](https://www.youtube.com/watch?v=8O2bRdO_F5U) (Senate)) (at 57:41 to 2:30:52)

37. Since 1979 the Wyoming statutes governing intestate succession have provided as follows: “Persons conceived before the decedent’s death but born thereafter inherit as if they had been born in the lifetime of the decedent.” Wyo. Stat. Ann. § 2-4-104.

38. During the constitutional convention, the framers of the Wyoming Constitution followed the Senate proposed enabling act (S. 2445) as they drafted and debated the ordinances to be included in the Wyoming Constitution. *See, e.g., Debates of the Constitutional Convention*, at 154, 156, 198, 212, 249, 587, 751.

39. S. 2445 dictated that the Wyoming Constitution must include five ordinances that are “irrevocable without the consent of the United States and the people of the State [of Wyoming.]” (Ex. F at 15).



40. The first ordinance provided “[t]hat perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.” (Ex. F, at 15).

41. The framers of the Wyoming Constitution believed that the five ordinances in S. 2445 had to be included in the Wyoming Constitution before Congress would admit Wyoming as a state. *Journal and Debates of the Constitutional Convention of Wyoming* 154, 156, 198, 212, 249, 587, 751 (1893).

42. The first ordinance in S. 2445 provided “[t]hat perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.” (Ex. F at 15).

43. The framers included the religious tolerance ordinance in the Wyoming Constitution because they believed S. 2445 required it to be in the Constitution. *Debates of the Constitutional Convention* 587.

DATED this 5<sup>th</sup> day of October 2023.

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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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