



STATE OF WYOMING
CLERK OF DISTRICT COURT
COUNTY OF TETON

FAX COVER SHEET

DATE:	3/18/2024		
FROM:	Jill Smith Chief Deputy, Clerk of District Court		
FAX NUMBER:		FAX NUMBER:	307-734-1562
PHONE NUMBER:		PHONE NUMBER:	307-733-2533
SUBJECT:	2022-CV-0018533		NO. OF PAGES INCLUDING COVER: 13 Pages
MESSAGE:	<p>Find attached the following orders from Judge Owens:</p> <ol style="list-style-type: none"> 1. Order on Plaintiffs' Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment and Notice Regarding Plaintiffs Filing of Updated Citations (5 Pages) 2. Order Certifying Questions to Supreme Court (7 Pages) 		

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**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.)

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.)

FILED 335 pm
MAR 18 2024
Dep. J. Green Smith
DISTRICT COURT
9TH JUDICIAL DISTRICT
TETON COUNTY WYOMING

ORDER CERTIFYING QUESTIONS TO SUPREME COURT

This matter comes before the Court upon its own Motion pursuant to Rule 11 of the Wyoming Rules of Appellate Procedure and upon entering an Order on Plaintiffs’ Request to Supplement the Record in Support of Plaintiffs’ Motion for Summary Judgment and Notice Regarding Plaintiffs Filing of Updated Citation. The Court having reviewed the file and being otherwise fully advised in the premises finds that the record in this matter is fully developed and issues before the Court involve questions of law that are determinative to this action in which there does not appear to be any controlling precedent in the decisions of the Wyoming Supreme Court.

A. QUESTIONS OF LAW TO BE ANSWERED

The Court finds that it would be in the interest of justice to certify the following questions of law to the Wyoming Supreme Court:

1. Does Wyo. Stat. § 35-6-139 titled “Chemical abortions prohibited, exceptions; penalty” and Wyoming’s Life is a Human Right Act (Act), codified under Wyo. Stat. §§ 35-6-120 to 35-6-138 violate Wyoming Constitution article 1, section 38?

If not:

2. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 2?
3. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 3?
4. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 6?
5. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 7?
6. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 18?
7. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 19?
8. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 33?
9. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 34?
10. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 36?
11. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 7, section 12?
12. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 21, section 25?
13. Is Wyo. Stat. § 35-6-120 *et seq.* unconstitutionally vague on its face?
14. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming citizens’ right to privacy?

B. FACTS RELEVANT TO QUESTIONS CERTIFIED

1. In 1973, the United States Supreme Court held that the United States Constitution protects a woman’s right to have an abortion before viability. *Roe v. Wade*, 410 U.S. 113 (1973). Thereafter, the Wyoming Supreme Court found that Wyoming’s existing abortion regulations were unconstitutional. *Doe v. Burk*, 513 P.2d 643, 644-45 (Wyo. 1973). Four years later, the Wyoming

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State Legislature enacted Wyo. Stat. § 35-6-102(a) which codified the United States Supreme Court's holding in *Roe v. Wade*.

2. In 2012, Wyoming citizens passed the "Right of Health Care Access" constitutional amendment. Wyo. Const. art. 1, § 38. The amendment provided Wyoming citizens with the right to make their own health care decisions and the right to directly pay their health care providers for health care services. Wyo. Const. art. 1, § 38(a)-(b). The amendment allows the Wyoming Legislature to place reasonable and necessary restrictions on health care decisions to: (1) "protect the health and general welfare of the people," or (2) "to accomplish the other purposes set forth in the Wyoming Constitution." Wyo. Const. art. 1, § 38(c). Finally, the amendment requires the State of Wyoming to preserve the rights to health care access from "undue governmental infringement." Wyo. Const. art. 1, § 38(d).
3. On June 24, 2022, the U.S. Supreme Court decided *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022). The decision held that the U.S. Constitution does not confer a right to abortion and the authority to regulate abortion is returned to the people and their elected representatives.
4. In 2023, the Wyoming Legislature enacted the "Life is a Human Right Act" which is codified under Wyo. Stat. §§ 35-6-120 to 35-6-138. In addition, the Wyoming Legislature enacted Wyo. Stat. § 35-6-139 titled "Chemical abortions prohibited; exceptions; penalty" which prohibits the use of medication to perform abortions. These statutes make almost all medicated and surgical abortions unlawful throughout the entire duration of a woman's pregnancy.
5. Both the Act and the medicated abortion statute provide some exceptions. The Act includes five exceptions. Wyo. Stat. § 35-6-124(a). The Legislature identified the following exceptions under the Act: (1) "pre-viability separation" procedures that prevent death, a substantial risk of death, or serious and permanent impairment of a life-sustaining organ; (2) accidental medical treatment that

results in the death of a fetus; (3) abortions when the pregnancy is the result of incest or rape so long as the victim provides a copy of a report made to law enforcement; and (4) abortions when the pregnancy is the result of a molar pregnancy or the fetus has a lethal fetal anomaly that creates a substantial likelihood of the death of the child within hours of birth.

6. Exceptions under Wyo. Stat. § 35-6-139 include: (1) when used as a contraceptive agent prior to conception; (2) when used 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.
7. The Act and Wyo. Stat. § 35-6-139 also assess criminal fines and penalties. Persons in violation of the Act are subject to felony prosecution, a fine not to exceed \$20,000, and potential imprisonment for up to five (5) years. The Act also subjects physicians or other professionally licensed persons to civil penalties that include immediate revocation of their professional license and a fine up to \$5,000. Finally, the Act includes civil statutory damages to prevailing plaintiffs in the amount of \$10,000. Persons in violation of Wyo. Stat. § 35-6-139 are subject to misdemeanor prosecution, a fine up to \$9,000, and the possibility of up to six months imprisonment.

C. NATURE OF THE CONTROVERSY IN WHICH THE QUESTIONS AROSE

1. After the passage of the Act and Wyo. Stat. § 35-6-139, the Plaintiffs filed this action on March 17, 2023. Plaintiffs filed an Amended Complaint for Declaratory Judgment and Injunctive Relief on March 21, 2023, asserting that both the Act and Wyo. Stat. § 35-6-139 violate the Wyoming Constitution.
2. The Plaintiffs include the following persons:
 - a. Danielle Johnson, a pregnant individual and practicing nurse residing in Teton County, Wyoming;

- b. Kathleen Dow, a woman of child-bearing age residing in Albany County, Wyoming;
 - c. Giovannina Anthony, M.D., an Obstetrics and Gynecology specialist residing in Teton County, Wyoming who provides abortion services;
 - d. Rene R. Hinkle, M.D., an Obstetrics and Gynecology specialist residing in Laramie County, Wyoming who provides obstetric services and primary gynecology and surgery;
 - e. Chelsea's Fund, a Wyoming non-profit 501(c)(3) organization that provides financial and logistical support to Wyoming residents seeking abortions; and
 - f. Circle of Hope Healthcare d/b/a Wellspring Health Access, a Wyoming non-profit corporation located in Natrona County, Wyoming that offer abortion and other health-related services to Wyoming residents.
3. The Defendants include:
- a. State of Wyoming;
 - b. Mark Gordon, Governor of the State of Wyoming;
 - c. Bridget Hill, Attorney General for the State of Wyoming;
 - d. Matthew Carr, Sheriff for Teton County, Wyoming; and
 - e. Michelle Weber, Chief of Police for the Town of Jackson, Wyoming.
4. This Court entered temporary restraining orders enjoining the enforcement of the Act and Wyo. Stat. § 35-6-139 after finding that the Plaintiffs were substantially likely to succeed on the merits of their claim that the statutes violated Wyo. Const. art. 1, § 38.
5. Since the entry of the temporary restraining orders, the parties have conducted discovery and filed cross motions for summary judgment on each of the constitutional challenges asserted by the Plaintiffs. The cross motions for summary judgment were fully briefed by the parties and *Amici Curiae* as follows:

- a. On September 18, 2023, Plaintiff filed *Plaintiffs' Motion for Summary Judgment* and *Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Summary Judgment*;
- b. On October 5, 2023, the State Defendants filed *State Defendants' Cross-Motion for Summary Judgment* and *State Defendants' Combined Memorandum of Law in Response to Plaintiffs' Motion for Summary Judgment and in Support of State Defendants' Cross-Motion for Summary Judgment*;
- c. On November 3, 2023, Plaintiffs filed *Plaintiffs' Memorandum in Opposition to State Defendants' Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment*;
- d. On November 16, 2023, the State Defendants filed *Reply Memorandum in Support of State Defendants' Cross-Motion for Summary Judgment*;
- e. *Amici Curiae* also filed a *Motion for Leave of Court to File Brief of Amici Curiae in Support of State Defendants* and a *Proposed Amicus Brief of Wyoming Physicians in Support of State Defendants* on October 16, 2023. Plaintiffs filed *Plaintiffs' Response to Motion for Leave to File Brief of Amici Curiae in Support of State Defendants* on October 30, 2023. Next, *Amici Curiae* filed a *Motion for Leave of Court to File Amended Brief of Amici Curiae in Support of State Defendants* and an *Amended* Amicus Brief of Wyoming Physicians in Support of State Defendants* on November 9, 2023. Plaintiffs filed *Plaintiffs' Non-Opposition to Motion for Leave to File Amended Amicus Brief* on November 17, 2023. Plaintiffs filed *Plaintiffs' Response to Brief of Amici Curiae in Support of State Defendants* on November 28, 2023. On January 30, 2024, State Defendants filed *State Defendants' Notice of Filing Judicially Noticed Documents/Information*. On February 5, 2024, Plaintiffs filed a *Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment*. On February 13, 2024, State

Defendants filed *State Defendants' Response to Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment*. On February 16, 2023, Plaintiffs filed *Plaintiffs' Updated Citations to Legislative Hearing Transcripts in Their Opposition to State's Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment*. On March 18, 2024, the Court filed an Order on *Plaintiffs' Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment and Notice Regarding Plaintiffs Filing of Updated Citations*.

D. DESIGNATION OF APPELLANT

In light of the procedural posture of this matter, the Court finds that the Plaintiffs should be designated as the Appellants.

IT IS THEREFORE ORDERED that, pursuant to W.R.C.P. 11, the above-stated questions of law are certified to the Wyoming Supreme Court for such further proceedings as the Supreme Court should order.

DATED this 18th day of March, 2024.



Melissa M. Owens
District 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 18 day of MAR 2024.

- J. Roberson / M. Bramlet via fax
- P. Modin / M. Cooney % Roberson Bramlet - Fax
- J. Krole - Fax E. Weisman - Email
- L. Colasvonnio - Fax
- T Szott via email
- F. Harrison - Fax
- D. Harle / T. Garrisa % Harrison via fax

By: Dep Jee Smith
WY Supreme Court via email + US Mail

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

DANIELLE JOHNSON; KATHLEEN)
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FUND; and CIRCLE OF HOPE)
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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 *mjhpr*
MAR 18 2024
Dep. J. Leasmith
DISTRICT COURT
9TH JUDICIAL DISTRICT
TETON COUNTY WYOMING

**ORDER ON PLAINTIFFS’ REQUEST TO SUPPLEMENT THE RECORD IN SUPPORT
OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND NOTICE
REGARDING PLAINTIFFS FILING OF UPDATED CITATIONS**

This matter came before the Court on the *Plaintiffs’ Request to Supplement the Record in Support of Plaintiffs’ Motion for Summary Judgment* (Request) filed on February 5, 2024. State Defendants filed a Response on February 13, 2024. No responses were filed on behalf of the remaining Defendants. The parties did not request a hearing. After reviewing the Request and Response the Court finds that this matter should be decided without a hearing pursuant to W.R.C.P. 6(c)(4).

Procedural Background

The summary judgment briefing in this case ended on November 16, 2023. This Court held oral arguments on the parties’ cross-motions for summary judgment on December 14, 2023. On February 5, 2024, Plaintiffs filed the Request currently before this Court. Plaintiffs seek to

supplement the record with a Supplemental Declaration of Giovannina Anthony, M.D. and the attached copy of Erika L. Sabbath, et al., US Obstetrician-Gynecologists' Perceived Impacts of Post-Dobbs v. Jackson State Abortion Bans, JAMA Network Open, Jan. 17, 2024 (Sabbath Article). The Sabbath Article finds that, "state abortion bans have created an occupational health crisis for OB-GYNs intertwined with a maternal health crisis for their patients."

Legal Argument

Plaintiffs argue the request is timely because the Sabbath article was first published on January 17, 2024, and therefore it could not have been presented to the Court at the time of the oral arguments. In addition, Plaintiffs assert the article does not raise any new issues or arguments but provides additional evidentiary support for issues already before the Court, including: 1) that physicians are unable to apply vaguely worded exceptions to abortion bans similar to those in the Wyoming Abortion Ban; 2) that such vaguely worded exceptions result in the delay or denial of essential medical care; 3) that abortion bans are inconsistent with the medical standard of care; and 4) abortion bans are negatively impacting the mental health of physicians. Finally, Plaintiffs argue their prior submissions on these issues were not rebutted by the State. Instead, the State Defendants chose to contest the relevance of this evidence. Therefore, the State Defendants' objections would equally apply to the article and the State will not be prejudiced.

State Defendants contend that the Court should deny the request to supplement the record because the Plaintiffs do not cite any legal authority for their request. State Defendants argue that Rule 7(b) of the Wyoming Rules of Civil Procedure require that Plaintiffs state their request with particularity upon which relief can be granted and Plaintiffs have not done so. State Defendants also assert that the portions of the article Dr. Anthony's supplemental declaration refers to are

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adjudicative facts which State Defendants have consistently asserted are not material or relevant in this litigation.

Legal Analysis

The Court finds that it would be unjust to allow Plaintiffs to supplement the record at this late juncture in the litigation. The parties were provided an opportunity to fully brief all of the issues before this Court. The Court extensively analyzed the parties' requests for the Court to take judicial notice of many materials and ruled on those requests prior to the hearing. A hearing was held to hear the parties' oral arguments on their cross motions for summary judgment.

Wyoming case law does not address the admission of the type of materials Plaintiffs propose to be supplemented into the record. However, the Court looks to Rules 7 and 15 of the Wyoming Rules of Civil Procedure for guidance on this issue. W.R.C.P. 7(b)(1) requires all motions to state with particularity the grounds for seeking the order and specifically state the relief sought. W.R.C.P. 15(d) states that "the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.

The Court finds in considering the Wyoming Court Rules that a district court has discretion to permit or deny a party to supplement the record. In this case, the supplemental material is presented after the cross motions were fully briefed, after the resolution of all pending motions addressing legislative facts, and after the close of the hearing on cross-motions for summary judgment. The Plaintiffs failed to cite any legal authority to support their Request. In addition, the Court is required to focus its analysis on the laws that were passed in the State of Wyoming. The Plaintiffs have not provided any analysis regarding the laws reviewed in the Sabbath Article and how

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those laws are similar to the current laws adopted by the Wyoming Legislature. The Court finds that the addition of the Sabbath Article and Dr. Anthony's Supplemental Declaration would be unjust at this late juncture in this litigation.

IT IS THEREFORE HEREBY ORDERED that *Plaintiffs' Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment* is respectfully **DENIED**.

IT IS FURTHER ORDERED that the supplemental declaration of Plaintiff, Dr. Anthony and the article attached to Dr. Anthony's supplemental declaration is hereby **STRICKEN**.

Notice Regarding Plaintiffs' Updated Citations to Legislative Hearing Transcripts in Their Opposition to States Motion for Summary Judgment and Reply in Support of Plaintiffs Motion for Summary Judgment

In the Court's *Order on State Defendants' Request for Court to Take Judicial Notice of Legislative Facts* filed on December 12, 2023, the Court ordered the State Defendants to file a copy of the transcript of the specific portions of the legislative sessions that the Court approved for judicial notice to be a part of the official record. On January 30, 2024, the State Defendants filed *State Defendants' Notice of Filing of Judicially Noticed Documents/Information*. Once those materials were filed, counsel for the Plaintiffs contacted the Court and counsel for the State Defendants to request that Plaintiffs be given an opportunity to provide updated citations to the legislative hearing transcripts filed by the State Defendants. At a telephone status conference held by the Court, State Defendants stated they had no objection to the filing of those updated citations subject to any previous legal objections they may have asserted. On February 16, 2024, Plaintiffs filed *Plaintiffs' Updated Citations to Legislative Hearing Transcripts in Their Opposition to the*

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