FILED
4:30 pm
NOV 18 2024
Deanna Bond
DISTRICT COURT
9TH JUDICIAL DISTRICT
TETON COUNTY WYOMING

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. 2023-CV-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.	)	

SUMMARY JUDGMENT ORDER

This matter comes before the Court on the parties' cross motions for summary judgment and an *Amended Amicus Brief of Wyoming Physicians in Support of State Defendants*. Plaintiffs filed their *Motion for Summary Judgment* on September 18, 2023. The Defendants filed a Cross Motion for Summary Judgment and the *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* on October 5, 2023. *Amici Curiae* filed their *Amended Amicus Brief of Wyoming Physicians in Support of State Defendants* on November 9, 2023. The parties filed their respective responses and replies to the motions together with their required W.R.C.P. 56.1 statement of facts.

The Court held a hearing on the parties' cross motions for summary judgment on December 14, 2023. John Robinson, Marci Bramlet, Peter Modlin and Megan Cooney appeared for the Plaintiffs. Jay Jerde appeared for the State of Wyoming, Mark Gordon, Governor of Wyoming, and Bridget Hill, Attorney General for the State of Wyoming. Erin Weisman appeared for Matthew Carr, Teton County Sheriff. Lea M. Colasuonno appeared for Michelle Weber, Town of Jackson Chief of Police.

Following the hearing, the parties supplemented the summary judgment record. On January 30, 2024, the Defendants filed *State Defendants' Notice of Filing Judicially Noticed Documents*. On March 18, 2024, this Court entered 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.* That Order completed the summary judgment record in this matter. The Court also entered an *Order Certifying Questions to Supreme Court* on March 18, 2024. The Wyoming Supreme Court filed a *Notice of Declination to Answer Certified Questions* on April 15, 2024, and this matter became ripe for a decision. The Court therefore issues this Order on the parties' cross-motions for summary judgment.

A. Nature of Controversy.

1. In this action, Plaintiffs seek declaratory judgment that Wyo. Stat. §§ 35-6-120 to 35-6-138 and Wyo. Stat. § 35-6-139 (collectively "the Abortion Statutes") violate the Wyoming Constitution. Plaintiffs also seek a permanent injunction prohibiting the enforcement of the Abortion Statutes. The Life as a Human Right Act (the Life Act), enacted as Wyo. Stat. §§ 35-6-120 to 35-6-138, prohibits persons from performing abortions in Wyoming. Wyo. Stat. § 35-6-138 (Medication Abortion Ban) prohibits prescribing or using medications for the purposes of performing abortions. Both the Life Act and the Medication Abortion Ban provide criminal fines and penalties for persons who violate the statutes. The Plaintiffs argue that the Life Act and the Medication Abortion Ban violate twelve provisions of the Wyoming Constitution. Those provisions include:

    a. Wyo. Const. art. 1 § 38 – Right of health care access;

b. Wyo. Const. art. 1 § 6 – Void for vagueness; *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004); *Griego v. State*, 761 P.2d 975 (Wyo. 1998);

c. Wyo. Const. art. 1 §§ 18 and 19; art. 7 § 12; art. 11 § 25 – Establishment of religion;

d. Wyo. Const. art. 1 § 18, art. 21 § 25 – Free exercise of religion;

e. Wyo. Const. art. 1 § 3 – Equal protection;

f. Wyo. Const. art. 1 §§ 2, 7, and 36 – Unenumerated Rights.

The Defendants assert that this Court should deny Plaintiffs' motion for summary judgment in its entirety and grant summary judgment in favor of the Defendants seeking dismissal of the Plaintiffs' amended complaint with prejudice.

B. Parties.

2. Plaintiffs. Plaintiffs consist of four individuals and two non-profit groups. All were Plaintiffs in *Johnson et al. v. State of Wyoming et al.*, Civil Action No. 18732 (9th Jud. Dist. Ct., Teton Cnty, Wyo. filed July 25, 2022) (*Johnson I*).[1] The Plaintiffs include:

a. *Danielle Johnson*. Ms. Johnson is a married individual and registered nurse residing in Teton County, Wyoming. Ms. Johnson was 22 weeks pregnant at the time *Johnson I* was before this Court. She intends to have more children while residing in Wyoming.

b. *Kathleen Dow*. Ms. Dow is a woman with plans to become pregnant who resides in Albany County, Wyoming. Ms. Dow is a life-long practitioner of Judaism. Her religious faith permits abortion to save the life of a mother. Under Jewish law, Ms. Dow's faith teaches that a mother's life takes precedence over a fetus until the majority of the fetus has been born.

c. *Giovannina Anthony, M.D.* Dr. Anthony is an Obstetrics and Gynecology specialist residing in Teton County, Wyoming. Dr. Anthony provides all forms of gynecologic and obstetric care, including medical abortions. Dr. Anthony faces criminal prosecution, imprisonment, fines, a permanent loss of her license to practice medicine, and civil penalties in the event of a violation of the Life Act.

[1] *See Infra* Part E ¶¶ 23-24.

d. *Rene Hinkle, M.D.* Dr. Hinkle is an Obstetrics and Gynecology specialist residing in Laramie County, Wyoming. Dr. Hinkle provides health care for women including full obstetric, primary gynecology, and surgery services to her patients. This includes counseling patients regarding all medical options including abortion. Dr. Hinkle treats patients with high-risk pregnancies, miscarriages, ectopic pregnancies, and fetal anomalies. For pregnant patients with lethal fetal anomalies, Dr. Hinkle offers abortion services. Dr. Hinkle also faces criminal prosecution, imprisonment, fines, a permanent loss of her license to practice medicine, and civil penalties in the event of a violation of the Life Act.

e. *Chelsea's Fund.* Chelsea's Fund is a Wyoming non-profit 501(c)(3) organization that provides financial and logistical support to Wyoming residents seeking abortions. Chelsea's Fund will incur additional expenses due to the increased travel and logistical arrangements necessary for assisting clients with traveling out of state to obtain abortion services.

f. *Circle of Hope Health Care Services, Inc.* Circle of Hope is a Wyoming non-profit corporation located in Casper, Wyoming. Circle of Hope advertised and expended funds and resources to open a medical clinic offering abortion services and other heath related services.

3. Defendants. The Defendants include: (1) Governor Mark Gordon; (2) Attorney General for the State of Wyoming, Bridget Hill; (3) Teton County Sheriff, Matthew Carr; and (4) the Town of Jackson Police Chief, Michelle Weber. All are sued in their official capacities.

C. Summary of Ruling.

4. After a review of the entire record and considering the excellent and thorough legal and factual arguments of counsel, the Court finds that the Life Act and the Medication Abortion Ban violate article 1, section 38 of the Wyoming Constitution. When a court determines that a statute, challenged on numerous constitutional grounds, violates one provision of the Constitution, the court need not consider the other constitutional issues asserted by the claimant. *Mills v. Reynolds*, 837 P.2d 48, 52 (Wyo. 1992) (holding that the challenged statute violated Wyoming's equal protection clause and declining to address the remaining constitutional issues raised). The Court declines to address the remaining constitutional challenges raised by the Plaintiffs on the basis of its finding pursuant to Wyo. Const. art. 1, § 38.

D. Relevant Statutory and Constitutional Provisions.

5. The Life Act. The "Findings and purposes" section of the Life Act states:

35-6-121. Findings and purposes.

(a) The legislature finds that:

(i) As a consequence of an unborn baby being a member of the species homo sapiens from conception, the unborn baby is a member of the human race under article 1, section 2 of the Wyoming constitution;

(ii) The legislature acknowledges that all members of the human race are created equal and are endowed by their creator with certain unalienable rights, the foremost of which is the right to life;

(iii) This act promotes and furthers article 1, section 6 of the Wyoming constitution, which guarantees that no person may be deprived of life or liberty without due process of law;

(iv) Regarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care. Instead of being health care, abortion is the intentional termination of the life of an unborn baby. It is within the authority of the state of Wyoming to determine reasonable and necessary restrictions upon abortion, including its prohibition. In accordance with Article 1, Section 38(c) of the Wyoming constitution, the legislature determines that the health and general welfare of the people requires the prohibition of abortion as defined in this act;

(v) The legislature, in the exercise of its constitutional duties and powers, has a fundamental duty to provide equal protection for all human lives, including unborn babies from conception;

(vi) Wyoming's "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." *Dobbs v. Jackson Woman's Health Org.,* 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

6. The Life Act includes the following definitions:

35-6-122. Definitions.

(a) As used in this act:

(i) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one (1) or more unborn babies in a multifetal pregnancy, with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn baby. "Abortion" shall not include any use, prescription or means specified in this paragraph if the use, prescription or means specified in this paragraph are done with intent to:

(A) Save the life or preserve the health of the unborn baby;

(B) Remove a dead unborn baby caused by spontaneous abortion or intrauterine fetal demise;

(C) Treat a woman for an ectopic pregnancy; or

(D) Treat a woman for cancer or another disease that requires medical treatment which treatment may be fatal or harmful to the unborn baby.

(ii) "Pregnant" means the human female reproductive condition of having a living unborn baby or human being within a human female's body throughout the entire embryonic and fetal stages of the unborn human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth;

(iii)"Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(iv)"Unborn baby" or "unborn human being" means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages from fertilization to full gestation and childbirth;

(v) "Ectopic pregnancy" means a pregnancy that occurs when a fertilized egg implants and grows outside the main cavity of the uterus;

(vi) "Lethal fetal anomaly" means a fetal condition diagnosed before birth and if the pregnancy results in a live birth there is a substantial likelihood of death of the child within hours of the child's birth;

(vii) "Molar pregnancy" means the development of a tumor or cysts that may or may not include placental tissue from trophoblastic cells after fertilization of an egg that results in spontaneous abortion or intrauterine fetal demise;

(viii) "This act" means W.S. 35-6-120 through 35-6-138.

7. The Life Act provides the following restrictions to terminating a pregnancy:

35-6-123. Abortion prohibited.

(a) Except as provided in W.S. 35-6-124, no person shall knowingly:

(i) Administer to, prescribe for or sell to any pregnant woman any medicine, drug or other substance with the specific intent of causing or abetting an abortion; or

(ii) Use or employ any instrument, device, means or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

35-6-124. Exceptions to abortion prohibition, applicability.

(a) It shall not be a violation of W.S. 35-6-123 for a licensed physician to:

(i) Perform a pre-viability separation procedure necessary in the physician's reasonable medical judgment to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition or the serious and permanent impairment of a life-sustaining organ of a pregnant woman, provided that no separation procedure shall be deemed necessary under this paragraph unless the physician makes all reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of the unborn baby in a manner consistent with reasonable medical judgment;

(ii) Provide medical treatment to a pregnant woman that results in the accidental or unintentional injury to, or the death of, an unborn baby.

(iii) Perform an abortion on a woman when 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. Prior to the performance of any abortion under this paragraph the

woman, or the woman's parent or guardian if the woman is a minor or subject to a guardianship, shall report the act of incest or sexual assault to the law enforcement agency and a copy of the report shall be provided to the physician;

(iv) Perform an abortion on a woman when in the physician's reasonable medical judgment, there is a substantial likelihood that the unborn baby has a lethal fetal anomaly or the pregnancy is determined to be a molar pregnancy.

(b) Nothing in this act shall be construed to prohibit the use, sale, prescription or administration of a contraceptive measure, drug, chemical or device if the contraceptive measure, drug, chemical or device is used, sold, prescribed or administered in accordance with manufacturer instructions and is not used, sold, prescribed or administered with the specific intent to cause or induce an abortion.

8. Penalties for violation of the Life Act include:

35-6-125. Penalties and remedies.

(a) Any person who violates W.S. 35-6-123 is guilty of a felony punishable by a fine not to exceed twenty thousand dollars ($20,000.00), imprisonment for not more than five (5) years, or both.

(b) Nothing in this act shall be construed to subject a pregnant woman upon whom any abortion is performed or attempted to any criminal penalty under this act.

35-6-126. Professional sanctions; civil penalties.

(a) In addition to any other penalties available under law, a physician or any other professional licensed person who intentionally, knowingly or recklessly violates W.S. 35-6-123 commits an act of unprofessional conduct, and the physician's or person's license to practice in Wyoming shall be immediately revoked by the state board of medicine after due process in accordance with the rules and procedures of the state board of medicine. Any person may file a complaint against the physician or other licensed person under this section, or the state board of medicine may on its own accord initiate a complaint against a physician or other licensed person. The state board of medicine may assess or impose the costs of any investigation, fines not to exceed five thousand dollars ($5,000.00) and any other disciplinary actions authorized by law that the board deems appropriate.

(b) No civil penalty shall be assessed against a pregnant woman upon whom an abortion is performed or attempted for a violation of this act.

35-6-127. Civil remedies.

(a) In addition to any remedies available under law, failure to comply with this act shall provide the basis for a civil action as provided by this section.

(b) Any pregnant woman upon whom an abortion has been performed, induced or coerced in violation of this act may maintain an action against the person or persons who violated this act for actual and punitive damages. In addition to all other damages and separate and distinct from all damages, a plaintiff prevailing in an action under this section shall be entitled to statutory damages of ten thousand dollars ($10,000.00) for each violation of this act from each defendant for each violation.

(c) A separate and distinct cause of action for injunctive relief against any person who has violated this act to enjoin further violation of this act may be maintained by any of the following:

(i) The woman upon whom an abortion was performed or induced in violation of this act;

(ii) The parent or guardian of the pregnant woman if the woman had not attained eighteen (18) years of age at the time of the abortion or if the woman died as a result of the abortion;

(iii)A district attorney with proper jurisdiction;

(iv)The attorney general.

(d) If judgment is rendered in favor of the plaintiff in a civil action authorized by this section, the plaintiff shall be entitled to receive reasonable costs and attorney fees from the defendant.

9. Medication Abortion Ban. The Medication Abortion Ban provides:

(a) Notwithstanding any other provision of law, it shall be unlawful to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person.

(b) The prohibition in subsection (a) shall not apply to:

(i) The sale, use, prescription or administration of any contraceptive agent administered before conception or before pregnancy can be confirmed through conventional medical testing;

(ii) The treatment of a natural miscarriage according to currently accepted medical guidelines;

(iii) Treatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment, 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. As used in this paragraph, "imminent peril" means only a physical condition and shall not include any psychological or emotional conditions. No medical treatment shall form the basis for an exception under this paragraph if it is based on a claim or diagnosis that the pregnant woman will engage in conduct which she intends to result in her death or other self-harm.

(c) Except as otherwise provided in this section, any physician or other person who violates subsection (a) of this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine not to exceed nine thousand dollars ($9,000.00), or both.

(d) A woman upon whom a chemical abortion is performed or attempted shall not be criminally prosecuted pursuant to subsection (c) of this section.

Wyo. Stat. § 35-6-120.

10. Right of Health Care Access. Wyoming Constitution's article 1, section 38 states:

(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 the 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 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.

11. Rights not enumerated reserved to people. Wyoming Constitution's article 1, section 36 states:

> The enumeration in this constitution, of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

E. Historical and Procedural Background.

12. From its earliest territorial days and at the advent of its statehood, Wyoming set itself apart by committing to the principle that its laws applied equally to both men and women. Wyoming was designated as a Territory of the United States in 1869 and gained statehood on July 10, 1890. As the first state in the history of the United States to give women the right to vote and hold office, it quickly became known as the "Equality State." T.A. Larson, History of Wyoming 78 (Univ. of Nebraska Press 2nd ed. 1990). In honor of this, the first official seal of Wyoming included the motto: "Equal Rights" which was later adopted as Wyoming's official motto pursuant to Wyo. Stat. § 8-3-107.

13. Over the course of Wyoming's entire state history, legislation regulating abortions always included exceptions to ensure the health of a pregnant woman. In its Territorial days, abortions performed under the advice of a physician for the purpose of saving a woman's life and preventing injury were not criminalized. Gen. Laws Terr. of Wyo., ch. 3, Title 1, § 25 (1869). Once more, Wyoming set itself apart from the nation by including exceptions for the health of a pregnant woman. Earlier abortion restrictions passed throughout the United States did not always include exceptions for the health of the pregnant woman. *See* Conn. Gen. Assembly ch. 22 § 14 (1821); Mo. Gen. Sess. ch. 1 § 12 (1825). Laws, ch. 73, § 31) (codified at Wyo. Rev. Stat. § 4969 (1899)). Wyoming's abortion restriction, first adopted in the 1800s, remained in effect without substantial changes for eighty-three years.

14. In 1973, the United States Supreme Court held that the United States Constitution protects a woman's right to have an abortion before viability. *See Roe v. Wade*, 410 U.S. 113 (1973) (*overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S.Ct. 2228 (2022)). To conform with *Roe*, the Wyoming Supreme Court found Wyoming's long standing abortion regulations unconstitutional. *Doe v. Burk*, 513 P.2d 643, 644-645 (Wyo. 1973). Four years later, the Wyoming state legislature enacted a new abortion regulation statute codifying the rights set forth in *Roe*. Wyo. Stat. § 35-6-102(a) (1977).

15. Under that legislation, Wyoming women were permitted to obtain an abortion anytime up to the point of viability or "when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment." Wyo. Stat. § 35-6-102(a) (1977). A violation of this regulation carried a potential prison sentence of not more than fourteen years. Wyo. Stat. § 35-6-110 (1977). This legislation remained in effect without amendment or legal challenge, at the state level, for a period of forty-five years.

16. During this period of time, when abortions were permitted up to the point of viability and to protect a pregnant woman from imminent peril, Wyoming citizens voted to amend the Wyoming Constitution. In 2012, Wyoming voters adopted the "right of health care access" amendment (the Health Care Amendment) which explicitly protects the right of competent adults to make their own health care decisions and to directly pay their health care providers for health care services. Wyo. Const. art, 1, § 38(a) and (b). The Health Care Amendment allows the 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 Health Care Amendment requires the State of Wyoming to preserve the right to health care access from "undue governmental infringement." Wyo. Const. art. 1, § 38(d)

17. The historical context of Wyoming's Health Care Amendment appears to be a response to the passage of national legislation known as the Patient Protection and Affordable Care Act (ACA) on March 23, 2010. St. Def. Not. Filing Judicially Noticed Documents/Information (St. Def. Judicially Noticed Docs) Attachment 1, S.J.R. No. SJ0002 (2011), Tr. 5: 16-22; 42 U.S.C.A. § 18001 (2010). In addressing the need for the Health Care Amendment, senators identified concerns regarding the governmental rationing of care and subjecting citizens to long waiting lists just to receive care. St. Def. Judicially Noticed Docs, Attachment 1, S.J.R. No. SJ0002, Tr. 7:1-3; 31: 10-17; 33:20-23. Legislators noted that the first two provisions were intended to protect against the rationing of medical care and to ensure that a citizen could go out and get the health care they need and also pay for the health care that they need on their own. St. Def. Judicially Noticed Docs, Attachment 1, S.J.R. No. SJ0002, Tr. 56:7-17; St. Def. Judicially Noticed Docs, Attachment 2. S.J.R. SJ0002 (Feb. 22, 2011), Tr. 6:3-6. Representative Gingery

summarized that the amendment would provide Wyoming citizens with, " . . . the right to make their own health care decisions if they're competent adults, and nobody can tell 'em what to do"' and he characterized this decision as "fundamental." St. Def. Judicially Noticed Docs, Attachment 2. S.J.R. SJ0002 (Feb. 22, 2011), Tr. 10:18-25; 11:1-2.

18. When the Health Care Amendment was originally introduced it was placed in article 7: Education; State Institutions; Promotion of Health and Morals; Public Buildings. S.J.R. SJ0002 (Jan. 11, 2011). However, the legislature ultimately placed it in article 1 where all of the enumerated individual rights are set out in Wyoming's Constitution. Senator Schiffer justified the relocation arguing that the provision was going to be a right that will belong to Wyoming citizens. St. Def. Judicially Noticed Docs, Attachment 1, S.J.R. No. SJ0002, Tr. 40:5-15, 18-22; 52:4-9.

19. The first draft of the amendment focused heavily on protecting individuals from forced participation in a health care system, as well as the forced purchase of private health insurance. S.J.R. SJ0002 (Jan. 11, 2011). However, the final text of the amendment focused on providing individuals with broad rights to make a decision about what health care that individual needs and the right to pay for that health care on their own without undue governmental interference. Wyo. Const. art. 1, § 38. This is illustrated by the language of the final version together with the proposed language that the legislature rejected.

20. For example, the legislature contemplated adding a requirement that only "lawful health care services" could be paid for directly by individuals. St. Def. Judicially Noticed Docs, Attachment 1, S.J.R. No. SJ0002, Tr. 13:5-25-14:1-10. The legislature rejected this phrase, reasoning that limiting the amendment to only "lawful health care services" would defeat the purpose of the amendment. *Id.* at 72:14-22; 73:10-19. By way of example, Senator Nicholas argued that a Medicare law prohibited coverage for physical therapy and the inclusion of only "lawful health care services" would defeat the purpose of the amendment. *Id.*

21. The legislature drafted an amendment that made a broad statement about "choice and freedom of choice." *Id.* at 72:14-22; 73:10-19. The Health Care Amendment was intended to provide citizens with a broad right to make their own health care decisions; enable health care providers to receive payment for and provide services without fines or requirements to say no to services;

allow the legislature to protect individuals from the unlicensed practice of medicine and harmful procedures, and to ensure that Wyoming citizens' right to make their own health care decisions is protected from undue infringement. *Id.* at 73:9-25; 74:1-22; 75:12-25; 76:1-2.

22. The next change to Wyoming's abortion legislation occurred during the 2022 Budget Session. The Wyoming legislature enacted House Enrolled Act Number 57 (original House Bill 0092). The amendment prohibited an abortion at any time during a woman's pregnancy, with three limited exceptions. Wyo. Stat. § 35-6-102(b) (2022). The limited exceptions included circumstances where abortion: (1) is "necessary to preserve the woman from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function;" (2) when a pregnancy is a result of incest pursuant to Wyo. Stat. § 6-4-402; or (3) when a pregnancy is a result of sexual assault as defined by Wyo. Stat. § 6-2-301. *Id.* The terms of the amendment provided for an effective date triggered by a decision issued from the United States Supreme Court overruling *Roe v. Wade*, 410 U.S. 113 (1973).

23. The United States Supreme Court overturned *Roe v. Wade* on June 24, 2022, when it issued its opinion in *Dobbs v. Jackson Women's Health Organization,* -- U.S. --, 142 S. Ct. 2228 (2022). The *Dobbs* decision found that the United States Constitution does not confer women with the right to obtain an abortion. 597 U.S. 215, 142 S. Ct. 2279 (2022). This returned the legal authority to regulate and prohibit abortion to the States.

24. Wyo. Stat. § 35-6-102(b)(2022) became effective on July 27, 2022. Prior to becoming effective, these same Plaintiffs filed *Johnson I* challenging the constitutionality of Wyo. Stat. § 35-6-102(b) under Wyoming's Constitution. *Johnson I* was pending before this Court during the 2023 Wyoming legislative session.

25. After *Johnson I*, the legislature repealed Wyo. Stat. § 35-6-102(b) and replaced it with House Bill 152, the Life Act. In response, Plaintiffs filed a complaint for declaratory judgment and injunctive relief and a request for a temporary restraining order. This Court held the hearing on *Plaintiffs' Motion for Temporary Restraining Order* on March 22, 2023. The Court entered a *Temporary Restraining Order*, effective immediately on March 22, 2023.

26. In addition, during the 2023 legislative session, the Wyoming legislature enacted Senate File 109, the Medication Abortion Ban. The Court held a hearing on Plaintiffs' Motion for

Temporary Restraining Order Against Enforcement of Medication Abortion Ban filed on May 10, 2023. The Court entered the Temporary Restraining Order, effective June 22, 2023.

F. Legal Standards.

27. Summary Judgment Standard. The usual summary judgment standard of review applies to declaratory judgment actions. *Lankford v. City of Laramie*, 2004 WY 142, ¶ 8, 100 P.3d 1238, 1241 (Wyo. 2024). Summary judgment shall be rendered "if the pleadings, . . . , together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wyo. R. Civ. P. 56(c). "A genuine issue of material fact exists when a disputed fact, if it were proven, would have the effect of establishing or refuting an essential element of the cause of action or defense that has been asserted by the parties." *Trabing v. Kinko's Inc.*, 2002 WY 171, ¶8, 57 P.3d 1248, 1252 (Wyo. 2002); *Williams Gas Processing-Wamsutter Co. v. Union Pacific Res. Co.*, 2001 WY 57, ¶ 11, 25 P.3d 1064, 1071 (Wyo. 2001). "Material fact" has been defined as a fact falling into any one of the following categories:

> [A fact] having legal significance which would control the legal relations of the parties; one upon which the outcome of the litigation depends in whole or in part; one on which the controversy may be determined; one which will affect the outcome of the case depending on its resolution; or, one which constitutes a part of the plaintiff's cause of action or the defendant's defense.

Reno Livestock Corp. v. Sun Oil Co., 638 P.2d 147, 151 (Wyo. 1981) (quoting *Johnson v. Soulis*, 542 P.2d 867, 871–72 (Wyo. 1975)).

The Court examines the record from the vantage point most favorable to the party who opposed the motion and gives that party the benefit of all favorable inferences that may fairly be drawn from the record. *Franks v. Indep. Prod. Co., Inc.*, 2004 WY 97, ¶ 9, 96 P.3d 484, 490 (Wyo. 2004).

28. The evidence "relied upon to sustain or defeat a motion for summary judgment must be such as would be admissible at trial and that it should be as carefully tailored and professionally correct as any evidence which would be presented to the court at the time of trial." Equal. Bank of Evansville, Wyo. v. Suomi, 836 P.2d 325, 330 (Wyo. 1992) (citing Gennings v. First Nat. Bank of

Thermopolis, 654 P.2d 154, 155 (Wyo. 1982) and Newton v. Hunter, 423 P.2d 648, 650 (Wyo. 1967)). In many cases, the Wyoming Supreme Court has found summary judgment supporting materials that failed this requirement. E.g., Bangs v. Schroth, 2009 WY 20, 201 P.3d 442 (Wyo. 2009) (affidavit insufficient for failing to state specific facts, for stating only categorical assertions of ultimate facts without specific supporting facts, and for failing to attach sworn or certified copies of papers referred to in affidavit); W. Surety Co. v. Town of Evansville, 675 P.2d 258 (Wyo. 1984) (affidavit containing significant opinions and conclusions that may be critical in the outcome of the case must reveal the underlying facts and basis and must have attached documents referred to in affidavit); Bancroft v. Jagusch, 611 P.2d 819 (Wyo. 1980) (bald conclusion type statement that party is or is not negligent contends for the ultimate issue to be decided by the fact finder and is inadmissible in evidence at trial); Keller v. Anderson, 554 P.2d 1253 (Wyo. 1976) (affidavit containing only affiant's conclusions and hearsay unsupported by competent material factual statements cannot be used by court in disposing of summary judgment motion).

29. Burden of Proof. The burden and standard of proof at summary judgment play a role at this stage of litigation:

> After a movant has adequately supported the motion for summary judgment, the opposing party . . . must affirmatively set forth material, specific facts in opposition to a motion for summary judgment, and cannot rely only upon allegations and pleadings . . . , and conclusory statements or mere opinions are insufficient to satisfy the opposing party's burden.
>
> The evidence opposing a prima facie case on a motion for summary judgment "must be competent and admissible, lest the rule permitting summary judgments be entirely eviscerated by plaintiffs proceeding to trial on the basis of mere conjecture or wishful speculation." Speculation, conjecture, the suggestion of a possibility, guesses, or even probability are insufficient to establish an issue of material fact.

Jones v. Schabron, 2005 WY 65, ¶ 11, 113 P.3d 34, 37–38 (Wyo. 2005) (citations omitted). The whole purpose of summary judgment, which is to pierce the formal allegations and reach the merits of a controversy where no material issue of fact is present, would be defeated if a case could be forced to trial by a mere assertion that an issue exists. *England v. Simmons*, 728 P.2d 1137, 1141 (Wyo. 1986).

30. Plaintiffs bear the burden of proving that the Life Act and the Medication Abortion Ban are unconstitutional. *Powers v. State*, 2014 WY 15, ¶ 7, 318 P.3d 300, 304 (Wyo. 2014) (*citing Krenning v. Heart Mt. Irigation Dist.*, 2009 WY 11, ¶ 33, 200 P.3d 774, 784 (Wyo. 2009)). In *Powers*, the Wyoming Supreme Court summarized the respective burdens of claimants and duties of a court when addressing constitutional challenges:

> The party challenging the constitutionality of a statute bears the burden of proving the statute is unconstitutional. *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995). That burden is a heavy one "in that the appellant must 'clearly and exactly show the unconstitutionality beyond any reasonable doubt.'" *Cathcart v. Meyer;* 2004 WY 49, ¶ 7, 88 P.3d 1050, 1056 (Wyo. 2004), quoting *Reiter v. State*, 2001 WY 116, ¶ 7, 36 P.3d 586, 589 (Wyo. 2001). In our analysis, we presume "the statute to be constitutional . . . any doubt in the matter must be resolved in favor of the statute's constitutionality." *Thomson v. Wyoming In-Stream Flow Committee*, 651 P.2d 778, 789-90 (Wyo. 1982); *Krenning v. Heart Mt. Irrigation Dist.*, 2009 WY at ¶ 33, 200 P.3d at 784. However, we have also recognized that '[t]hough the supreme court has the duty to give great deference to legislative pronouncements and to uphold constitutionality when possible, **it is the court's equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution.** *Washakie County Sch. Dist. V. Herschler*, 606 P.2d 310, 319 (Wyo. 1980); *Powers*, 318 P.3d at ¶ 7, 318 P.3d at 303 (emphasis added).

31. Constitutional Interpretation. Wyoming's long-standing principles of constitutional interpretation were adopted and explained in *Rasmussen v. Baker*:

> The primary principle underlying an interpretation of constitutions or statutes is that the intent is the vital part, and the essence of the law. The object of construction as applied to a written constitution is to give effect to the intent of the people in adopting it. In the case of all written laws, it is the intent of the lawgiver that is to be enforced. Such intent, however, is that which is embodied and expressed in the statute or instrument under consideration. **The intent must be found in the instrument itself. If the language employed is plain and unambiguous, there is no room left for construction. It must be presumed that in case of a construction the people have intended whatever has been plainly expressed. Courts are not at liberty to depart from that meaning which is plainly declared.**

7 Wyo. 117, 50 P. 819, 821 (Wyo. 1897) (emphasis added).

32. In *Rasmussen*, the Court also emphasized that the Court is "not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language." *Rasmussen*, 7 Wyo. 117, 50 P. at 821. "The natural import of the words is that which their utterance promptly and uniformly suggests to the mind, -that which common use has affixed to them." *Id.* (citations omitted). Courts are, "required to apply the 'fundamental principle of constitutional interpretation that each and every clause within [the Wyoming] constitution has been inserted for a useful purpose.'" *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 164 (Wyo. 1992).

33. The Wyoming Supreme Court consistently adheres ". . . to the principle that the language of the text is of primary importance in constitutional interpretation[.]" *Powers*, 2014 WY at ¶ 9, 318 P.3d at 304 (cleaned up). "As a general proposition, reference to the debates for interpretation of constitutional language is appropriate only if we find the provision at issue to be ambiguous." *Powers v. State*, 2014 WY at ¶ 39, 318 P.3d at 314 (citing *Rasmussen*, 7 Wyo. at 138, 50 P. at 824). Overall, the Wyoming Supreme Court has found that debates of the convention are unreliable sources for constitutional construction. *Id.*

G. Legal Analysis.

34. Scrutiny. Plaintiffs assert that the freedom to make health care decisions and the unenumerated rights provision of the Wyoming Constitution involve fundamental rights. Plaintiffs contend that the Abortion Statutes must pass the strict scrutiny test. Defendants argue that the Wyoming Constitution does not confer a fundamental right to abortion because abortion is not deeply rooted in the history and tradition of this country. In contrast, the Defendants urge this Court to apply the rational basis test. Defendants reason that the provision that allows the legislature to impose "reasonable and necessary restrictions" to the right to make health care decisions is similar to the language utilized in the rational basis test.

35. In Wyoming, "[a] fundamental right is a right which the constitution **explicitly** or implicitly guarantees." *Mills v. Reynolds*, 837 P.2d 48, 53-4 (Wyo. 1992) (citing *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) (citations omitted) (emphasis added). The Wyoming Supreme Court applies strict scrutiny to statutes involving fundamental rights stating: "[t]o reiterate, a statute impacting a fundamental right is

constitutional under strict scrutiny only if it is necessary to achieve a compelling state interest and the method of protecting the state's interest is the least intrusive necessary to accomplish the goal." *Ailport v. Ailport*, 2022 WY 43, ¶ 27 507 P.3d 427, 438 (Wyo. 2022) (citations omitted). Strict scrutiny requires the State to show how the proposed regulation is narrowly tailored to achieve a compelling state interest. *See Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P. 2d. 310, 333-36 (Wyo. 1980).

36. If the challenged statute does not involve a fundamental right, the Court uses the rational basis test. *Vaugh v. State*, 2017 WY 29, ¶ 26, 391 P.3d 1086, 1095 (Wyo. 2017). A statute does not impact a fundamental right when it affects "ordinary interests in the economic and social welfare area." *Id.* Under the rational basis test, the Court is only required to find that the statute in question is rationally related to a legitimate state objective." *Id.* The law does not require the statute to "be in every respect logically consistent with its aims to be constitutional." *Vaughn*, 2017 WY at ¶ 30 (citing *U.S. v. Comstock*, 560 U.S. 126, 151, 130 S.Ct. 1949, 1966, 176 L.Ed.2d 878 (2010) (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-88, 75 S.Ct. 461, 99 L.Ed. 563 (1955)). However, the statute needs to provide a rational means of correcting the problem the legislature sought to cure by enacting the statute.

i. Health care decisions are fundamental rights under Wyoming's Constitution.

37. The Court need not engage in an analysis on whether the Wyoming Constitution implicitly grants individuals a fundamental right to make their own health care decisions. The right is explicitly written into the constitution under Wyoming Constitution, article 1, section 38. Laws impacting this fundamental right must satisfy the strict scrutiny test. Therefore, this Court must find that the Abortion Statutes are necessary to achieve a compelling state interest. Additionally, the Court must find that the method of protecting the state's interest is the least intrusive necessary to accomplish the state's goal. *Ailport*, 2022 WY at ¶ 27, 507 P.3d at 438 (citations omitted).

ii. Decisions regarding medicated and surgical abortions constitute health care decisions and are subject to the protections set forth under Wyo. Const. art. 1, § 38.

38. When the language of a constitutional clause is plain and unambiguous, Wyoming Supreme Court precedent holds that there is no room left for judicial construction. *Rasmussen*, 7 Wyo.

117, 50 P. 819, 821 (Wyo. 1897). The Court finds no ambiguity with the words utilized in Article 1, § 38(a). Applying the meaning of the words plainly expressed in article 1, § 38(a), the Court finds that Plaintiffs have made a sufficient showing that the drafters intended to give all competent Wyoming adults a right to make their own decisions about what health care services they receive from medical professionals to restore and maintain their health. The Court also notes that this is not a new concept.

39. Ordinary Meaning of Health Care. Plaintiffs assert that both medicated and surgical abortions constitute health care. Plaintiffs position is supported by reference to dictionary definitions of "health care;" prevailing opinions from medical organizations; governmental health agencies; and language used in the Abortion Statutes. Defendants argue that the plain and ordinary meaning of health care precludes a finding that abortion is health care. Defendants concede that medical and surgical abortions involve medical services. However, Defendants contend that pregnancy does not fall under the definition of the word "health" because it is not a physical disease or sickness. Defendants state that abortions, for reasons other than physical health cannot be health care. Additionally, Defendants suggest that a decision to have an abortion cannot qualify as a woman's "own" decision because it also impacts the fetus. Finally, Defendants assert that abortion does not fall under the plain meaning of "health care" because the legislature included a finding in the Life Act that declares that abortion is not health care under Wyo. Const. art. 1, § 38.

40. The intent of statutes and constitutional provisions are derived from assessing the plain and ordinary meaning of the words used in the provisions. *Black Diamond Energy of Delaware, Inc. v. Wyoming Oil and Gas Conservation Commission*, 2020 WY 45, ¶ 33, 460 P.3d 740, 750 (Wyo. 2020) (citations omitted). When interpreting the meaning of constitutional language, courts look to the meaning of the words at the time the constitutional language was ratified. *Powers v. State*, 2014 WY 15, ¶ 36, 318 P.3d 300, 313 (Wyo. 2014). The citizens of Wyoming adopted the Health Care Amendment in 2012.

41. "Health care" is not defined in the Wyoming Constitution. The Wyoming legislature has previously defined the term "health care" under the Wyoming Health Care Decisions Act 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)(2005). The Wyoming Health Care Decisions Act also defines "health care decisions" in pertinent part as:

> (ix) a decision made by an individual or the individual's agent . . . regarding the individual's health care, including:
> (A) Selection and discharge of health care providers and institutions;
> (B) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
> (C) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

The findings set out in the Life Act state in pertinent part:

> (iv) Regarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care. Instead of being health care, abortion is the intentional termination of the life to an unborn baby. It is within the authority of the state of Wyoming to determine reasonable and necessary restrictions upon abortion, including its prohibition. In accordance with Article 1, Section 38(c) of the Wyoming constitution, the legislature determines that the health and general welfare of the people requires the prohibition of abortion as defined in this act;

42. This Court acknowledges that the definitions under the Wyoming Health Care Decisions Act are not controlling to this Court's interpretation of the term "health care." However, the Court includes this reference to point out that those definitions were drafted by the Wyoming legislature in 2005. They were also in place and in use by the legislature at the time that the legislature drafted the Health Care Amendment in 2011. Both the Wyoming Health Care Decisions Act and the Health Care Amendment include the words "health care" and "health care decisions."

43. In 2012, the Merriam-Webster's Collegiate Dictionary defined "health care" as "efforts made to maintain or restore health esp[ecially] by trained and licensed professionals[.]" *Merriam-Webster's Coll. Dictionary,* p. 574 (11th ed. 2012) (alterations added). Other dictionaries present slightly different definitions. The Oxford English Dictionary defines "health care" as "[c]are for the general health of a person, community, etc., esp[ecially] that provided by an organized health service[.]" *Oxford English Dictionary* 54 (2nd Ed. 1996) (alterations added). The Oxford English Dictionary's definition of "health care" has not changed since 1940. The Cambridge Dictionary

of American English defined "health care" as "[t]he providing of medical services[.]" *Cambridge Dictionary of American English* 400 (2nd Ed. 2008).

44. "Health care" is a common everyday household term. It no doubt sits at the forefront of every adult's mind as they navigate the responsibilities of their life, their household expenses, and their own health and wellbeing. Overall, the dictionary definitions contemplate that "health care" includes professional medical services for sick individuals and also for well individuals. In the context of sick individuals, the health care services are obviously provided to restore a person's health. In the context of well individuals, the health care services are obviously provided to ensure that those individuals remain well.

45. The Defendants urge the Court to construe the term narrowly and within the confines of the word "health." Defendants focus on the elements of "sickness" in the context of health care and suggest that the Court would need to find that pregnancy is a physical disease or sickness. Defendants then argue that abortion can only fit within the definition of "health care" if the Court finds it "frees pregnant woman from the physical disease or sickness of pregnancy." The Court disagrees that it must make this finding.

46. Health care involves much more than disease and sickness. The vast majority of the definitions set forth above involve a more expansive view of health care. Additionally, many respected organizations view the word "health" more expansively. For example, the, "WHO defines health as a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity." *Memorandum in Support of Plaintiffs' Motion for Summary Judgment* (Plts. Memo) (Sept. 18, 2023), Ex. 1, Anthony at ¶ 61, Attachment D.

47. The Court finds that the common and ordinary meaning of the word "health care" in the Health Care Amendment unambiguously means professional medical services to individuals whether they are well or unwell. Accordingly, professional medical services providing medication and surgical abortions to pregnant women, whether those pregnant women are physically well or unwell, is unambiguously "health care."

48. Consensus of Medical Organizations and Governmental Agencies. Additionally, legislative facts also establish that there is a broad consensus among the medical community and governmental health agencies that abortion services are health care services. The American College of

Obstetrics and Gynecologists (ACOG), a professional membership organization for obstetricians-gynecologists, takes the position that abortion services are an essential component of health care. Decl. Anthony, Ex. 1, at ¶¶ 20-21 (citing Am. Coll. Obstetricians & Gynecologists Facts are Important website: acog.org/advocacy/facts-are-important/abortion-is-healthcare). The U.S. Department of Health and Human Services takes a similar position noting that safe and legal abortion care is an essential part of health and well-being. *Id.* At ¶ 24 (citing Dep't of Health & Human Servs. Press Office., *Know Your Rights: Reproductive Health Care* (June 25, 2022), https: //www.hhs.gov/about/news/2022/06/25/know-your-rights-reproductive-health-care.html). Additionally, the World Health Organization (WHO) maintains that "induced abortion is a simple and common health-care procedure." *Id.* 22 (citing World Health Org, *Abortion, https://who.int/health-topics/abortion#tab=tab_1*).

49. Legislative Interpretation is not Binding. Contrary to the plain meaning of "health care" in the Wyoming Constitution, the Life Act contemplates an entirely different meaning of "health care." The Life Act includes a legislative interpretation of the meaning of "health care" that states: "[r]egarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care." The Life Act further finds that "instead of being health care, abortion is the intentional termination of the life of an unborn baby." The Life Act defines "unborn baby" as "an individual living member of the species homo sapiens through the entire embryonic and fetal stages from fertilization to full gestation and childbirth." Wyo. Stat. § 35-6-122(a)(iv). The Life Act defines "abortion" in pertinent part as:

> The act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elevation of one (1) or more unborn babies in a multifetal pregnancy, with knowledge that the termination by those means will, with reasonable likelihood cause the death of the unborn baby. "Abortion" shall not include any use, prescription or means specified in this paragraph if the use, prescription or means are done with the intent to:
> (A) Save the life or preserve the health of the unborn baby; or
> (B) Remove a dead unborn baby caused by spontaneous abortion or intrauterine fetal demise;
> (C) Treat a woman for an ectopic pregnancy; or
> (D) Treat a woman for cancer or another disease that requires medical treatment which may be fatal or harmful to the unborn baby.

50. The Wyoming Supreme Court gives much weight to the legislature's interpretation of the constitution and is "loath to interpret the constitution otherwise," however, legislative interpretation is not binding on the Court. *Geringer v. Bebout*, 10 P.3d 514, 522 (Wyo. 2000) (citing *Coronado Oil Co. v. Grieves*, 603 P.3d 406, 411 (Wyo. 1979)); *Oregon Basin Oil & Gas Co. v. Ohio Oil Co.*, 70 Wyo. 263, 248 P.2d 198, 204 (1952); *Laverents v. City of Cheyenne*, 67 Wyo. 187, 217 P.2d 877, 883 (1950); *State ex rel. Irvine v. Brooks*, 14 Wyo. 393, 84 P. 488, 492-93 (1906). Although it is the Court's duty to give deference to the legislative pronouncement that abortions, as defined under the Life Act, are not health care, it is the Court's "equally imperative duty to declare a legislative enactment invalid if it transgresses the state constitution." *Witzenburger v. State ex rel. Wyoming Community Development Authority*, 575 P.2d 1100, 1114 (Wyo. 1978). Statutory and constitutional interpretation is a question of law and interpreting a statute in conjunction with the constitution is a power that falls upon the court as part of our government's system of checks and balances between our three branches of government. *Gordon v. State by and through Capitol Building Rehabilitation*, 2018 WY 32, ¶ 55, 413 P.3d 1093, 1109 (Wyo. 2018) (citing *Washakie Cty. Sch. Dist. No. One v. Herschler*, 606 P.3d 310, 318 (1980) (citing Article 2, § 1 of the Wyoming Constitution and *Marbury v. Madison*, (1803), 5 U.S. (1 Cranch) 137, 2 L.Ed. 60). In recognition of this system, the Wyoming Supreme Court has stated:

> [t]he judiciary will not encroach into the legislative field of policy making; however, as the final authority on constitutional questions, the judiciary has the constitutional duty to declare unconstitutional that which transgresses the state constitution. *State v. Campbell Cty. Sch. Dist.*, 2001 WY 19, ¶ 55, 19 P.3d 518, 540 (Wyo. 2001) (citing *Rose v. Council for Better Educ. Inc.*, 790 S.W.2d 186, 209 (Ky. 1989) ("The judiciary has the ultimate power, and the duty, to apply, interpret, define, construe all words, phrases, sentences and sections of the .... Constitution .... It is solely the function of the judiciary to do so ..., even when such action serves as a check on the activities of another branch of government.")).

Gordon v. State by and through Capitol Building Rehabilitation, 2018 WY 32, ¶ 55, 413 P.3d 1093, 1109 (Wyo. 2018).

When applying the plain meaning of the term "health care" as it relates to the definition of "abortion" under the Life Act and Medication Abortion Ban, the Court cannot conclude that abortions are not health care simply because the legislature has made such a pronouncement. It is

undisputed that an abortion eliminates all of the medical risks a woman faces from pregnancy and childbirth. Plts. Memo, Decl. Moayedi, Ex. 7, at ¶51. When looking at its functions and the nature of health care and abortions, the Court finds that "health care" includes professional services for medicated and surgical abortions whether the pregnant woman is physically well or unwell. Additionally, the definition of the term "abortion" under the Life Act uses the following medical terms and phrases: prescribing, medicine, drug, clinically diagnosable, prescription, save the life, preserve the health, treat a woman, ectopic pregnancy, disease, and medical treatment. Therefore, the Court finds that the plain and ordinary meaning of the word "health care" includes abortion procedures.

51. Abortion services are a pregnant woman's decision. Defendants assert that abortions do not fall under the Health Care Amendment. According to Defendants, an abortion does not constitute a pregnant woman's "own health care decision." The Defendants reason that an abortion impacts the fetus in addition to herself. According to the Defendants, "section 38(a) confers a right for a pregnant woman to make decisions that affect her health care "provided those decisions do not also affect others." This Court rejects the Defendants' contention.

52. The Health Care Amendment does not prohibit a person from making their own health care decision if their decision impacts any other person. As the Plaintiffs argued, only a pregnant woman can make a decision to have an abortion. No other person can make that decision for a competent pregnant woman. To adopt Defendants' argument the Court would have to rewrite the Health Care Amendment. Further, the Health Care Amendment does not include the caveat that it only applies to health care decisions "that do not affect others" or that it applies to medical decisions "as long as those medical decisions do not involve abortions." The Defendants interpretation would require the Court to construe the Health Care Amendment to include words and language that were not included by the drafters. Such constitutional construction is impermissible. Additionally, such reasoning would certainly risk unintended consequences and allow the legislature to usurp nearly all prenatal medical decisions simply because anything pregnancy related impacts the fetus.

53. Finally, the Court also rejects Amici's argument that the abortions undermine the "two-patient" paradigm in medicine. Unlike the facts presented by the Plaintiffs, Amici does not support their position that there is a "two-patient" paradigm in medicine with any medical literature.

ii. Uncontested material facts establish that the restrictions in the Abortion Statutes are not reasonable and necessary.

54. The right to make health care decisions is not wholly unrestricted. The legislature is empowered with the authority to impose "reasonable and necessary" restrictions on the right to make health care decisions in order to "protect the health and general welfare of the people or to accomplish the other purposes set forth in the Wyoming Constitution." Article 1, § 38(c). The review of what constitutes "reasonable and necessary" restrictions to health care is a matter of first impression in Wyoming.

55. Evidentiary Record. Before commencing the reasonable and necessary analysis the Court will first address the Defendants' argument that the Court should disregard the medical testimony presented by the Plaintiffs. Defendants assert that this is a purely legal issue. Defendants argue that the Court is prohibited from considering any of the expert medical opinions offered by Plaintiffs. The Defendants reason that the expert medical opinions go to the ultimate issues of law and are irrelevant to the issues before the Court. The Court respectfully disagrees with the Defendants.

56. Courts frequently rely on legislative history, evidence, expert opinions, and prevailing historical data when addressing constitutional challenges. For example, in 1905, the United States Supreme Court relied on statistical evidence regarding the efficacy of smallpox vaccines in addressing the constitutionality of a compulsory vaccination law. *Jacobson v. Massachusetts*, 197 U.S. 11, 30, 25 S.Ct. 358, 363 (1905). In *Brown v. Board of Ed. Topeka*, the United States Supreme Court relied on social science studies in finding that the doctrine of "separate but equal" has no place in America's public schools. 347 U.S. 483, 494 n. 11, 74 S.Ct. 686, 692 n. 11 (1954). This Court finds no legal justification to ignore expert medical testimony, prevailing medical opinions, and the factual record presented by the parties. Ignoring the evidentiary records risks the Court

improperly substituting its judgment for that of the legislature. *Hodes & Nauser, MDs P.A. v. Schmidt*, 440 P.3d 461, 514, 309 Kan 610, 700 (Kan. 2019) (Biles, J., concurring).

57. This matter involves the interpretation of statutes that will dictate what medical care will be available to pregnant women in Wyoming and the impact on medical professionals applying the statutes. The Plaintiffs presented medical testimony, primarily through three experts in the field of obstetrics and gynecology: Giovannina Anthony, M.D.; Rene R. Hinkle, M.D.; and Dr. Ghazaleh Kinney Moayedi, DO, MPH, FACOG. The Court finds that the Plaintiffs' experts demonstrated extensive knowledge in their fields of expertise and that they supported the opinions in their declarations with extensive data and citations to the sources they consulted.

58. Governmental Interests. To assess whether the Abortion Statutes restrictions are reasonable and necessary, the Court must look to the State's interests for enacting the laws. In this case, the Act identifies the specific governmental interests contemplated by the legislature. Those interests include:

    a. respect for and preservation of prenatal life at all stages of development;
    b. protection of maternal health and safety;
    c. the elimination of particularly gruesome or barbaric medical procedures;
    d. the preservation of the integrity of the medical profession;
    e. the mitigation of fetal pain; and
    f. the prevention of discrimination on the basis of race, sex, or disability. Wyo. Stat. § 35-6-121(a)(vi).

The evidentiary record demonstrates that the uncontested facts establish that the Abortion Statutes fail to accomplish any of the asserted interests by the State. The State did not present any evidence refuting or challenging the extensive medical testimony presented by the Plaintiffs.

a. Respect for and preservation of prenatal life at all stages.

59. The State argues that respect for and preservation of prenatal life at all stages of development constitutes a compelling governmental interest. However, the Court does not find that respect for and preservation of prenatal life at *all stages* of pregnancy is a compelling governmental interest. Additionally, the Court finds that both the Life Act and the Medication Abortion Ban fail to accomplish the State's intended goal.

60. The Life Act and the Medication Abortion Ban elevate the rights of all potential life, even at the earliest stages of development, over the fundamental rights of pregnant women during the entire duration of their pregnancy. The Court finds that the State's interest is not compelling until such time as the fetus is viable and capable of survival outside of the mother's womb. The Court cannot reconcile how a small group of prenatal cells, such as a zygote, that has only the potential of life, can trump the fundamental right of a living, breathing, pregnant woman to make her own medical decisions.

61. Even if a compelling governmental interest arose from the moment of conception, the Abortion Statutes do not actually protect and preserve prenatal life at all stages. The Life Act prohibits families and their physicians from multi-fetal reduction procedures without exception. Expert medical testimony established that in comparison to singleton pregnancies, multifetal pregnancies are associated with a fivefold increased risk of stillbirth and a sevenfold increased risk of neonatal death. Moayedi at ¶ 17. Although medical evidence established that the procedure is offered in order to save the life of at least one or two fetuses making up a multifetal pregnancy, the Life Act prohibits the use of this procedure. Moayedi at ¶ 17. This strips the right of a pregnant woman to make a medical decision that will give at least one of her fetuses the best chance of survival in a multifetal pregnancy and increases the risks of neonatal death and stillbirth. Additionally, exceptions that allow a victim of incest and rape to abort their fetuses also fail to achieve the State's intended purpose. While the Court recognizes that the rape and incest exceptions are necessary and appropriate exceptions, these exceptions establish that the Abortion Statutes do not accomplish their goal of preserving prenatal life at all stages.

b. *Protection of maternal health and safety and the preservation of the integrity of the medical profession.*

62. The Court finds that the Abortion Statutes' stated interests of protecting maternal health and safety and preserving the integrity of the medical profession do not actually accomplish these goals. Extensive medical evidence presented by the Plaintiffs unequivocally establishes that the Life Act and Medication Abortion Ban place the health and safety of pregnant Wyoming women in real and present danger.

63. Additionally, the Court finds that the Abortion Statutes will undermine the integrity of the medical profession by hamstringing the ability of physicians to provide evidence-based medicine to their patients when medically indicated. Plaintiffs presented expert medical testimony establishing that the Abortion Statutes force obstetrician-gynecologists to provide substandard care across all socioeconomic groups to the detriment of women's health in Wyoming. Plts. Memo, Decl. Anthony, Ex. 1, ¶ 34.

64. At the outset, the uncontested facts establish that abortion procedures are safe and effective. Plts. Memo, Decl. Anthony, Ex. 1, ¶¶ 61, 63-64, Attachment D. The American College of Obstetricians and Gynecologists points out that, "[t]he risk of complication or mortality from abortion is less than the same risk from common procedures like wisdom tooth removal, a cancer-screening colonoscopy, and plastic surgery." *Id.* at ¶ 59, Attachment B. Similarly, medicated abortions have two decades of safety and efficacy data in the United States and three decades globally. Plts. Memo, Decl. Moayedi Ex. 7, at ¶ 23. Serious adverse events happen in less than .5 % of medicated abortions and they are safer than childbirth. Decl. Moayedi Ex. 7, at ¶¶ 23-24. Expert medical testimony established that abortion regulations are not about women's health and safety. Plts. Memo, Decl. Anthony, at ¶ 63, Attachment E. The Court finds that medicated and surgical abortions in the United States administered under the care of medical providers are safe and effective medical procedures and finds no evidence that the Abortion Statutes improve the safety of women or the practice of medicine.

65. In contrast, the medical evidence presented by the Plaintiffs established that carrying a pregnancy to full term, labor, and childbirth are significant medical events that are associated with risks that far exceed the minimal risks presented by abortion. Plts. Memo, Decl. Hinkle, Ex. 2, at ¶ 17. One expert opined that "[a] patient's risk of death associated with pregnancy and childbirth is more than 12 times higher than the risk of death associated with legal abortion." *Id.* at ¶ 17. Still another, opined that the risk is even higher at 14 times higher. Plts. Memo, Decl. Moayedi, Ex. 7, at t ¶ 19. The uncontested medical evidence establishes that pregnant women, even those with healthy uncomplicated pregnancies, face a host of medical risks which include, to name only a few: hemorrhage, sepsis, stroke, kidney failure, long-term urinary and fecal incontinence, and pelvic organ prolapse. Plts. Memo, Decl. Hinkle, Ex. 2, at ¶¶ 19-22.

66. The Abortion Statutes subject women to delayed care or even prevent access to evidence-based medical care. Plts. Memo, Decl. Anthony, Ex. 1, at ¶ 20. Women with complex pregnancies will be forced to travel out of the state just to receive essential health care. *Id.*, Decl. Anthony, Ex. 1, at ¶¶ 6-8. Although medical experts acknowledge that the Abortion Statutes provide a few exceptions for treating women with urgent medically necessary care that may be harmful for the fetus, those same experts agree that the Abortion Statutes fail to include clear exceptions for all of the complex medical situations that arise in pregnancy where an abortion is necessary. *Id.*, Decl. Anthony, Ex. 1, at ¶ at ¶ 20. Dr. Hinkle opined, "[b]ecause of the Bans, we will not be able to deliver the full range of scientifically proven best practices in obstetric care and will be obligated to delay necessary medical care until the very narrow and vaguely defined exceptions are triggered." Plts. Memo, Decl. Hinkle, Ex. 2, at ¶ 9. Dr. Anthony confirmed that the exceptions are so vague and the criminal penalties for an unanticipated violation are so grave, that she would be forced to transfer her patients out of state rather than risk breaking the law by incorrectly applying the vague exceptions. Plts. Memo, Decl. Anthony, Ex. 1, at ¶ 24. This in turn will delay necessary care to Wyoming women, limit their available medical care, and have grave consequences that may even include death. *Id.*, Decl. Anthony, Ex. 1, at ¶ 24.

67. The Abortion Statutes disregard an entire class of illnesses. They exclude all mental health conditions to the detriment of women who face these illnesses while pregnant. Women with diagnosed mental health conditions, who are at risk of self-harm and suicide because of their pregnancy, are excluded from the imminent peril exceptions set out in the Abortion Statutes. Plts. Memo, Decl. Hinkle, Ex. 2, at ¶ 47. Uncontroverted expert medical testimony established that mental illness is a physical illness involving the brain. Plts. Memo, Decl. Moayedi Ex. 7, at ¶ 38. Data presented by the uncontroverted medical testimony shows that "the leading cause of pregnancy related death in the United States is from mental health conditions, specifically death by suicide and overdose." *Id.* The Court finds that the Abortion Statutes' failure to recognize an exception for the mental health of women at risk of self-harm and suicide is unreasonable in light of data establishing that mental health conditions are the leading cause of pregnancy-related death.

68. The Abortion Statutes fail to provide appropriate exceptions for lethal fetal defects that place the maternal health of women in peril. Plts. Memo, Decl. Anthony, Ex. 1, at ¶ 37. To qualify for this exception under the Abortion Statutes, a physician must opine that "there is a substantial likelihood of death of the child within hours of the child's birth." Plts. Memo, Decl. Moayedi Ex. 7, at ¶ 17. Medical testimony offered in this matter establishes that medical professionals do not predict the number of hours a neonate will die from a lethal fetal anomaly. *Id.* The medical profession looks at mortality rates within the first-year, fatalities in utero, and fatalities "shortly after birth." *Id.* Additionally, the medical experts that would have to apply the lethal fetal defect exception opine that there is no clear standard to determine if a fetus with a lethal defect will die within "hours" of a live birth. Plts. Memo, Decl. Hinkle, Ex. 2, at ¶ 10. For example, Trisomy 18 and Trisomy 13, are each lethal defects that "offer no chance of delivering a viable baby." *Id.*, Decl. Hinkle, Ex. 2, at ¶ 27. However, a child who is delivered alive with these two defects may survive up to a few days. *Id.* In the case of skeletal dysplasia (where the fetuses' bones do not develop) a child who is delivered alive may survive a few days. *Id.* Evidence established that full-term pregnancies pose real health risks to women that can even include death. Plts. Memo, Decl. Anthony, Ex. 1, at 37. When a patient has a fetus with a lethal fetal defect, forcing that woman to carry a non-viable fetus to term simply because the physician cannot determine with clarity how many hours the fetus and family will suffer as the child dies is unethical and inhumane. *Id.* When reviewing the uncontested material facts, the Court concludes that the exceptions for lethal fetal defects do not in fact have a workable place in the medical profession. Thus, any woman carrying a fetus that has a lethal fetal anomaly is effectively precluded from having an abortion. Plts. Memo, Decl. Moayedi, Ex. 7, at ¶ 17.

69. The Medication Abortion Ban eliminates the use of medications for the purposes of procuring abortions. This law not only bans nearly all abortions, it degrades the quality of prenatal care available for women in Wyoming. Plts. Memo, Decl. Anthony, Ex. 1 at ¶ 47; Decl. Hinkle, Ex. 2 at ¶¶ 37, 39. Medicated abortions are the primary procedure used in Wyoming and were the only procedure used in Wyoming in 2021 and 2022. *Id.*, Decl. Anthony, Ex. 1 at ¶¶ 12, 16; Decl. Hinkle, Ex. 1 at ¶ 39. In addition, banned medications, like Misoprostol, are utilized in both medicated and surgical abortions. *Id.*, Decl. Anthony at ¶ 46. As a result, the Medication

Abortion Ban prevents women from accessing "nearly all forms of abortion care. *Id.* Criminalizing the use of medications for abortion may limit the availability of such medications that have a wide range of uses for other gynecological procedures such as the medical management of a miscarriage. *Id.*, Decl. Anthony, Ex. 1, at ¶ 48; Decl. Hinkle, Ex. 2, at ¶ 44. Further, for women that require an abortion for reasons that clearly fall under the exceptions of the Abortion Statute, the Medication Abortion Ban appears to limit those women from having a medication abortion and instead must unnecessarily obtain a surgical abortion. *Id.*, Decl. Anthony, Ex. 1, at ¶ 5; Decl. Hinkle, Ex. 2 at ¶ 45.

70. Due to the forced delay of care that the Abortion Statutes create, physicians throughout Wyoming will be forced to practice in a manner that is contrary to the recommendations of the American College of Obstetrics and Gynecology, the American Medical Association and degrades medical professionals' ability to provide ethical, evidenced-based care, that is in the best interest of their patients. *Id.*, Decl. Anthony, Ex. 1, at ¶ 25. Physician testimony presented by the Plaintiffs assert that women who have miscarriages will receive delayed care due to the uncertainty inherent in the Abortion Statutes. *Id.*, Decl. Hinkle, Ex. 2, at ¶ 45. The uncertainty is caused by the Abortion Statutes' use of non-medical terms to regulate and criminalize the practice of medicine, such as "natural miscarriage," which is undefined. *Id.* at ¶ 46.

71. The Abortion Statutes utilize made-up medical terms, such as "separation procedure," that are not medical procedures, not taught in medical schools, and have no associated procedural code. Plts. Memo, Decl. Moayedi, Ex. 7, at ¶ 7. Dr. Moayedi opines that a physician is unlikely to risk their license and freedom to apply exceptions that utilize made-up medical terms and the clauses providing exceptions are too vague to actually prevent harm to pregnant women with serious medical complications. *Id.* at ¶¶ 7, 9. Evidence presented by the Plaintiffs indicates that women who require treatment to prevent sepsis are turned away under abortion bans until sepsis is present. *Id.* at ¶ 11. Withholding care in circumstances where a pregnant woman is not quite sick enough does not support the legislature's finding that the Abortion Statutes protect maternal safety and preserve the integrity of the medical profession. Moayedi at ¶ at 11, 13. Legislating this type of substandard medical care is particularly harmful in the state of Wyoming due to its lack of medical infrastructure to offer emergent life-saving care. *Id.* at ¶¶ 13. The Plaintiffs'

medical experts have also opined that criminalizing evidenced-based, ethical medical care, will worsen Wyoming's current shortage of obstetricians/gynecologists. Plts. Memo, Decl. Anthony, Ex. 1, at ¶ 41. Physicians do not wish to practice in locations where evidence-based care is criminalized and substandard medical care is mandated by the legislature. This degrades the quality of medical care available to women in Wyoming.

72. Further, necessary exceptions for true pregnancy emergencies that result in severe morbidity and mortality and require abortion are vague and lack medical detail to effectively implement. Plts. Memo, Decl. Moyaedi, Ex. 7, at ¶¶ 15-17. The medical testimony provided numerous examples of various types of ectopic pregnancies that do not fall under the legislature's medically "incorrect" definition of ectopic pregnancies. *Id.* at ¶ 15. Similar problems arise in the context of the exception provided for molar pregnancies. *Id.* at ¶ 16. The legislature's definition of "molar pregnancy" is incorrect and does not account for circumstances where a partial molar pregnancy may exist with fetal cardiac activity. *Id.*

c. The elimination of particularly gruesome or barbaric medical procedures; mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.

73. The Court finds that the mitigation of fetal pain is not a compelling governmental interest based on the medical evidence presented by Plaintiffs regarding fetal pain during the first and second trimester of pregnancy. Leading medical organizations such as the American College of Obstetricians and Gynecologists, the Journal of the American Medical Association, the Royal College of Obstetricians and Gynecologists, and the Society of Maternal Fetal Medicine take the position that a fetus does not have the capacity to feel pain until at least the third trimester. Plts. Memo, Decl. Moayedi, Ex. 7, at ¶ 20. Studies have found that a fetus does not have the "neurodevelopmental anatomy required" to recognize pain until at least week 29 of pregnancy. *Id.* at ¶ 20. Additionally, the evidentiary record does not establish that medicated and surgical abortions are gruesome or barbaric medical procedures requiring elimination. The medical profession studies abortion procedures, teaches abortion procedures, and produces clinical guidelines regarding abortion. Abortion procedures constitute essential health care for pregnant

women. There is no compelling governmental interest to eliminate abortion procedures based on the State's position that abortions are gruesome and barbaric. Finally, no facts are before the Court to establish that Wyoming Abortion Statutes prevent discrimination on the basis of race, sex, or disability.

Conclusion.

74. Under the Life Act and the Medication Abortion Ban, the State has enacted laws that impede the fundamental right to make health care decisions for an entire class of people, pregnant women. Wyoming Constitution, article 1, section 38 provides all individuals with the fundamental right to their own personal autonomy when making medical decisions. The Defendants have not established a compelling governmental interest to exclude pregnant women from fully realizing the protections afforded by the Wyoming Constitution during the entire term of their pregnancies, nor have the Defendants established that the Abortion Statutes accomplish their interest. The Court concludes that the Abortion Statutes suspend a woman's right to make her own health care decisions during the entire term of a pregnancy and are not reasonable or necessary to protect the health and general welfare of the people. The restriction begins even at the earliest stages of embryonic development, makes no distinction between a zygote and a fetus, and makes no distinction between a pre-viable and a viable fetus. The Court finds that the Plaintiffs have made a sufficient showing, through uncontested medical testimony, that the Abortion Statutes place unreasonable and unnecessary restrictions on the right of pregnant women to make their own health care decisions. The Court finds that the Abortion Statutes are facially unconstitutional.

75. Having concluded that the Abortions Statutes violate Wyo. Const. art. 1, §38, the Court turns to the Plaintiffs' request for a permanent injunction. Injunctions are appropriately issued when a threatened harm is irreparable and there is no adequate remedy at law. *Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 36, 395 P.3d 167, 177 (Wyo. 2017) (citations omitted) (Injunctive relief may be sought when an injury is impending.) *Realto Theatres, Inc.*, 714 P.2d 328 (Wyo. 1986); *Reno Livestock Corp. v. Sun Oil Co. (Del.)*, 638 P.2d 147, 153 (Wyo. 1981)). The deprivation of constitutional rights is, *per se*, irreparable injury. "The 10th Circuit has repeatedly held that the

loss of constitutional rights, even for a short period of time, unquestionably constitutes irreparable injury . . . ." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189-90 (10th Cir. 2003)); *see also Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019)("Most courts consider the infringement of a constitutional right enough to require no further showing of irreparable injury."); *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) ("When an alleged right is involved, most courts hold that no further showing or irreparable injury is necessary." (citation omitted)). "Irreparable harm is, by definition, harm for which there can be no adequate remedy of law." *CBM Geosolutions, Inc. v. Gas Sensing Technology Corp.*, 2009 WY 113, ¶ 9, 215 P.3d 1054, 1058 (Wyo. 2019). The Court finds that an injunction is appropriate and should be granted in this matter.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Summary Judgment is **GRANTED** with respect to their claim for relief under the Wyoming Constitution, article 1, section 38, and the request for a permanent injunction.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment is **DENIED.**

IT IS FURTHER ORDERED that the Court **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 the Life as a Human Right Act, enacted as Wyo. Stat. §§ 35-6-120 to 35-6-138 and the Medication Abortion Ban, enacted as Wyo. Stat. § 35-6-138.

DATED this 18th day of November, 2024.

1 l 10

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 18 day of NOV 2024.

P. Modlin/M. Cooney/J. Robinson/M. Bramlet via fax
J. Jerde via fax
R. Stout via email
L. Colasuonno/C. Anderson via fax

DBF Brassard