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IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT

IN AND FOR NATRONA COUNTY, WYOMING

DANIELLE JOHNSON; GIOVANNINA ANTHONY, M.D.; RENE HINKLE, M.D.; CHELSEA'S FUND; JTP PROFESSIONAL SERVICE CORPORATION, d/b/a Just The Pill; CIRCLE OF HOPE HEALTH CARE SERVICES, INC., d/b/a Wellspring Health Access, Plaintiffs, v. STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; JOHN HARLIN, Sheriff Natrona County, Wyoming; and SHANE CHANEY, Chief of Police, City of Casper, Wyoming, Defendants.	Case No. 2025 – CV – 0114940 District Judge Daniel L. Forgey

MEMORANDUM IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER AGAINST WYOMING'S CRIMINAL TRAP LAW

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COME NOW Plaintiffs, by and through undersigned counsel, file this Memorandum in support of their *Motion for a Temporary Restraining Order*, and in support thereof hereby state as follows:

INTRODUCTION AND DISPOSITION REQUESTED

In enacting House Bill 42, the Wyoming State Legislature attempts to indirectly accomplish what it so far has failed to do directly: ban abortion. The abortion bans enacted prior to House Bill 42 have been permanently enjoined and found unconstitutional under the Wyoming Constitution, and the State's appeal of that judgment is pending in the Wyoming Supreme Court. Not content to await the outcome of that case, the legislature now has adopted a series of new restrictions that will effectively stop procedural abortions in the state. Although abortions have been performed for many decades in Wyoming without any significant complications, the legislature claims suddenly to have discovered the need for a multitude of restrictions to protect women's health. But House Bill 42 does nothing to protect women—instead it affirmatively harms women's health and infringes on their fundamental rights under the Wyoming Constitution.

The restrictions imposed by House Bill 42—including various restrictions targeted at closing the sole procedural abortion clinic in the state—are taken straight from the anti-abortion playbook. As courts routinely have found, these restrictions, often referred to as targeted regulations of abortion providers ("TRAP") laws, have no medical purpose and are thinly veiled efforts to ban abortion under the guise of medical regulation. Although legislators claim that House Bill 42 protects women, they fail to offer any explanation or evidence to support this assertion, which is directly contradicted by the terms of the statute, the undisputed evidence, and the legislative record.

Because House Bill 42 violates the constitutional rights (1) to make health care decisions, (2) of equal protection, and (3) against vague criminal statutes, and because Plaintiffs will suffer irreparable injury if the law is enforced, the Court should enter a temporary restraining order ("TRO") enjoining enforcement of House Bill 42, both facially and as applied to Plaintiffs.

STATEMENT OF FACTS

In the 2022 legislative session, the Wyoming State Legislature adopted House Bill 92 (the "Trigger Ban"), which amended the State's abortion law to prohibit abortion at any point during a woman's pregnancy with limited exceptions. Wyo. Stat. Ann. § 35-6-102 (2022). After the Trigger Ban was preliminarily enjoined, during the 2023 legislative session, House Bill 152 was adopted, repealing the Trigger Ban and replacing it with another prohibition, providing somewhat different but equally narrow exceptions (the "Criminal Abortion Ban"). Wyo. Stat. Ann. § 35-6-123 (2023). That same session, the legislature also passed Senate File 109 (the "Criminal Medication Ban," and together with the Criminal Abortion Ban, the "Abortion Bans"), which would prohibit use of medication for abortions that were otherwise legal. The vast majority of abortions in Wyoming are through medication.

On November 19, 2024, the District Court of Teton County granted the plaintiffs' motion for summary judgment and permanently enjoined the Criminal Abortion Ban and Criminal Medication Ban, finding that these bans violate article 1, section 38 of the Wyoming Constitution, which guarantees the fundamental right of health care access. *See Johnson et al. v. State of Wyoming et al.*, Civil Action No. 18853 (9th Jud. Dist. Ct., Teton Cnty. Wyo., Nov. 18, 2024) (Summary Judgment Order ¶ 4) ("*Johnson II* SJ Order").

In the 2024 session, the Legislature adopted House Bill 148 (2024), also known as House Enrolled Act 37, as a bill to regulate "surgical abortions."[1] H.B. 148, 67th Leg., Budget Sess. (Wyo. 2024), https://www.wyoleg.gov/Legislation/2024/HB0148. A separate bill, House Bill 137 (2024), was also introduced and would have imposed ultrasound and waiting period requirements for medication abortions. H.B. 137, 67th Leg., Budget Sess. (Wyo. 2024), https://wyoleg.gov/2024/Introduced/HB0137.pdf. After House Bill 137 failed to make it past introduction, its provisions were incorporated into House Bill 148.

Ultimately, the Governor vetoed House Bill 148. *See* Letter from Governor Mark Gordon Re: Veto of HB0148/House Enrolled Act No. 37 Regulation of Abortions (Mar. 22, 2024). In doing so, the Governor characterized House Bill 148 as a political "vehicle to count pro-life votes" that was "burdened with considerations that misaligned it with laws Wyoming [was] defending before the courts" and "confused the issue," rendering it "vulnerable to challenge." *Id.* at 2. The Governor "implore[d]" the Legislature "to let the Courts do their job" and await the outcome of the pending litigation over the state's abortion bans before considering new anti-abortion bills. *Id.*

Ignoring the Governor's advice, in the 2025 session, the Legislature adopted House Bill 42 (the "Criminal TRAP Law"), which includes provisions substantially similar to the 2024 House Bill 148 vetoed by the Governor.[2] *See* House Enrolled Act No. 26, H.R. 42, 68th Leg., Gen. Sess.

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[1] It should be noted that the term "surgical abortion" is a misnomer. Non-medication abortions do not involve surgery. *See, e.g.*, Ex. 5, Burkhart ¶ 10. For this reason, we refer to such a procedure as a "procedural abortion."

[2] In terms of how the 2024 and 2025 bills differ, House Bill 42 does not include a waiting period and ultrasound requirement, although those have been incorporated into a separate bill—House Bill 64—which has not become law as of this filing. *See* House Enrolled Act No. 35, H.R. 64, 68th Leg., Gen. Sess. (Wyo. 2025). Otherwise, House Bill 42 adds three definitions—for ectopic pregnancy, intrauterine fetal demise, and miscarriage. The bill also removes any exceptions to the definition of abortion that would "provide treatment" to "save or preserve the life" of the pregnant patient. *See* Wyo. Stat. Ann. § 35-6-201(a)(i)(D) (2024). Additionally, it modifies the definition of surgical abortion facility, such that any number of monthly or annual procedural abortions performed by any clinic requires it to comply with the new statutory regime. Wyo. Stat. Ann. § 35-6-201(a)(x). Otherwise, the bill contains minor stylistic changes and is substantially similar to the licensing provisions of its 2024 counterpart.

(Wyo. 2025), Wyo. Stat. Ann. §§ 35-6-201 through 35-6-204 (2025), Wyo. Stat. Ann. § 35-2-901(a)(ii) (amended) (2025), and Wyo. Stat. Ann. "Section 3, Section 4, Section 5" (statutes unidentified as published) ("House Bill 42"). On February 27, 2025, the Governor signed the Criminal TRAP Law into law.

Under House Bill 42, facilities that provide procedural abortions must be licensed as ambulatory surgical centers ("ASCs"). Wyo. Stat. Ann. §§ 35-6-201(a)(x), 35-6-202(a)–(b). To obtain an ASC license, abortion clinics must comply with a multitude of construction and operational requirements. In addition, physicians who perform procedural abortions in so-called "surgical abortion centers" must have admitting privileges at a hospital within ten miles. Wyo. Stat. Ann. § 35-6-202(d)(ii). These requirements are carefully tailored to target the sole procedural abortion provider in Wyoming—Plaintiff Wellspring Health Access ("Wellspring") in Casper, Natrona County—and will force the facility to shut down.

Plaintiffs in this action include the only clinic that provides procedural abortions in Wyoming, a Wyoming woman of reproductive age, licensed physicians, a nonprofit organization providing telehealth abortion care in Wyoming, and a nonprofit organization that facilitates abortion access for Wyoming women. In support of the present motion, Plaintiffs hereto attach declarations which are incorporated herein by this reference.[3] Unless this Court issues a TRO, Wyoming's Criminal TRAP Law will strip Wyoming women of their rights and access to safe and legal abortion and delay or deny them essential health care. In addition, their physicians and health care providers will lose the right to continue offering necessary, evidence-based health care

[3] *See* **Exhibit 1**, Declaration of Giovannina Anthony, M.D.; **Exhibit 2**, Declaration of Rene R. Hinkle, M.D.; **Exhibit 3**, Declaration of Julie Amaon, M.D.; **Exhibit 4**, Declaration of Christine Lichtenfels; **Exhibit 5**, Declaration of Julie Burkhart; **Exhibit 7**, Declaration of Danielle Johnson. (Exhibit 6 intentionally omitted)

services to their patients and face criminal penalties for providing essential, constitutionally protected medical care.

LEGAL STANDARD

This court may issue a TRO upon a "clear showing of probable success and possible irreparable injury to the plaintiff." *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp*., 2009 WY 113, ¶ 7, 215 P.3d 1054, 1057 (Wyo. 2009) (citations omitted); Wyo. Stat. Ann. § 1-28-102 (2024); Wyo. R. Civ. P. 65. As demonstrated below, Plaintiffs are substantially likely to prevail on the merits of multiple constitutional claims, and Plaintiffs will suffer irreparable harm should the statute take effect. In addition, the balance of hardships and public interest strongly support issuing a temporary restraining order and maintaining the status quo.

ARGUMENT

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS OF THEIR CONSTITUTIONAL CLAIMS.

Wyoming's Criminal TRAP Law runs afoul of numerous rights guaranteed by the Wyoming Constitution. While Plaintiffs' Complaint alleges multiple constitutional claims, for purposes of this motion, we focus on three: (1) the constitutional right of Wyoming citizens to control their own health care, free from undue government interference; (2) the constitutional right to equal protection; and (3) the constitutional prohibition on vague criminal statutes that do not provide sufficient notice to regulated parties of what conduct is prohibited. Because the restrictions in House Bill 42 apply exclusively to Plaintiff Wellspring and its physicians and patients, Plaintiffs' challenge to that statute is as applied, while the other Plaintiffs challenge House Bill 42 both facially and as applied.

A. Wyoming's Criminal TRAP Law Violates Wyo. Const. Art. I, § 38 – Health Care.

Article I, section 38 of the Wyoming Constitution provides:

> (a) ***Each competent adult shall have the right to make his or her own health care decisions***. The parent, guardian or legal representative of any other natural person shall have the right to make health care decisions for that person.
> . . .
> (c) The legislature may determine ***reasonable and necessary restrictions*** on the rights granted under this section ***to protect the health and general welfare of the people*** or to accomplish the other purposes set forth in the Wyoming Constitution.
> (d) The state of Wyoming shall act ***to preserve these rights from undue governmental infringement***.

(emphasis added).

Section 38 explicitly protects and holds fundamental every adult's right to "make his or her own health care decisions," subject only to the State's power to enact restrictions that are reasonable and necessary to protect the public health and welfare ***and*** that do not unduly infringe on Wyomingites' rights. Wyo. Const. art. 1, § 38 ("Section 38"). Both the statutory language and the evidence conclusively demonstrate that the Criminal TRAP Law undermines, rather than furthers, the asserted purpose of protecting women's health, and unreasonably interferes with necessary and appropriate medical care for Wyoming women. As such, the statute is not "reasonable and necessary" to protect public health and welfare ***and*** contravenes the legislature's duty to avoid undue infringement of this right. The Criminal TRAP Law therefore violates Section 38.

1. Abortion Is Health Care Under Section 38.

It is beyond credible dispute that abortion is health care. In granting summary judgment and a permanent injunction against the Abortion Bans, the District Court in *Johnson II* held that the plain meaning of "health care" "unambiguously" encompassed abortion. *Johnson II*, SJ Order ¶¶ 47–48, 50. In reaching this decision, the Court relied on the common definitions of health care as "efforts made to maintain or restore health esp[ecially] by trained and licensed professionals,"

id. ¶ 43 (quoting Merriam-Webster's Collegiate Dictionary (11th ed. 2012)), "[c]are for the general health of a person . . . esp[ecially] that provided by an organized health service," *id.* (quoting Oxford English Dictionary (2d. ed. 1996)), and the "providing of medical services," *id.* (quoting Cambridge Dictionary of American English 400 (2d. ed. 2008)).

The Court also found that "there is a broad consensus among the medical community and governmental health agencies that abortion services are health care services." *Johnson II*, SJ Order ¶ 48 (citing sources); *see, e.g.*, Ex. 1, Anthony at Attachment C (Dep't of Health & Human Servs. "Know Your Rights" Press Release); *id.* at Attachment D (WHO Abortion Webpage). Based on this evidence, the Court rejected as too narrow the State's argument that health care is exclusively geared towards curing physical illness, *Johnson II*, SJ Order ¶ 45, and concluded that "professional medical services providing medication and surgical abortions to pregnant women, whether those pregnant women are physically well or unwell, is unambiguously 'health care,'" *id.* ¶ 47.

Further, under the Wyoming Health Care Decisions Act, "health care" is broadly defined as "any care, treatment, service or procedure ***to maintain, diagnose or otherwise affect an individual's physical or mental condition***." Wyo. Stat. Ann. § 35-22-402(a)(viii) (2005) (emphasis added). This definition plainly encompasses any abortion.

Lastly, it is clear from the face of the Criminal TRAP Law that the statute regulates health care. The statute directly regulates the medical profession, concerns health care treatments defined as "surgical" procedures, and treats abortion clinics as ambulatory surgical centers subject to regulation by the Department of Health. Wyo. Stat. Ann. § 35-6-202. It is beyond credible dispute that House Bill 42 regulates health care.

2. The Criminal TRAP Law Violates Section 38.

Because abortion unambiguously is a health care decision under Section 38, the legislature

may only (1) "determine reasonable and necessary restrictions . . . to protect the health and general welfare of the people" that (2) do not result in "undue governmental infringement" of the right of Wyomingites to make their own abortion-related decisions. Wyo. Const. art. I, § 38(c)–(d); *Johnson II*, SJ Order ¶ 34. On their face, the challenged statutes do not satisfy either of these constitutional requirements.

Strict scrutiny applies to the Court's review of the Criminal TRAP Law's constitutionality because this matter involves a fundamental, enumerated right under the Wyoming Constitution. *Ailport v. Ailport*, 2022 WY 43, ¶ 27, 507 P.3d 427, 438 (Wyo. 2022); *see Johnson II*, SJ Order ¶ 37 ("Laws impacting th[e] fundamental right [of individuals to make their own health care decisions] must satisfy the strict scrutiny test."). As held in *Johnson II*, the more exacting requirements of Section 38—that a statute be reasonable and necessary to protect public health and welfare ***and*** not unduly infringe on the right of Wyoming citizens to control their own health care—align with the strict scrutiny test, under which the State must show that the statute furthers a compelling state interest in the least intrusive means available. Wyo. Const. art. I, § 38; *Ailport*, 2022 WY ¶ 27, 507 P.3d at 438; *Johnson II*, SJ Order ¶ 35. A statute that is "necessary" to protect the public health and welfare furthers a compelling state interest, while avoiding "undue infringement" of the right to control health care is akin to the least intrusive means available to further that state interest.

However, the Criminal TRAP Law cannot survive any level of scrutiny: the statute would fail even the rational-basis test because it is "beyond a reasonable doubt, not related to a legitimate government interest." *Hardison v. State*, 2022 WY 45, ¶ 10, 507 P.3d 36, 40 (Wyo. 2022) (citation omitted); *see also Nehring v. Russell*, 582 P.2d 67, 77 (Wyo. 1978) ("[T]he classification must be reasonable in its discrimination in the light of the objects sought to be accomplished and must not

be arbitrary."). As the Wyoming Supreme Court has commented, the constitutional bare minimum requires that "[i]n order that a statute may be valid, . . . the means adopted must be reasonable and not arbitrary, and must be appropriate for the accomplishment of the end in view; in other words, there must be a substantial connection between the purpose in view and the actual provisions of the law." *State v. Langley*, 84 P.2d 767, 771 (Wyo. 1938).

(i) The Criminal TRAP Law Is Not "Reasonable and Necessary" to Protect the Health and Safety of Women.

The Criminal TRAP Law is not "reasonable and necessary" to protect "health and general welfare," Wyo. Const. art. I, § 38(c), nor does it achieve the statute's stated interests in promoting health and safety of women, as required to withstand constitutional scrutiny. House Bill 42 purportedly "relat[es] to public health and safety." H.B. 42, 68th Leg., Gen. Sess. (Wyo. 2025) (introduction). When introducing the bill in the House Committee on Labor, Health, and Social Services, the bill's sponsor, Representative Martha Lawley, stated that the surgical center regulations are intended to "protect the health and safety of women who choose to get a surgical abortion." Wyo. Legislature, *House Labor, Health & Social Servs. Comm.*, YOUTUBE (Jan. 22, 2025), https://www.youtube.com/watch?v=oICFxdsEF-8 at 1:40:47–40:59; *see also* Wyo. Legislature, *Senate Labor, Health & Social Servs. Comm.*, YOUTUBE (Feb. 14, 2025), https://www.youtube.com/live/2WRh_kYOOnM at 00:24:45–26:26 (Representative Lawley stating the same).

The protection of the health and safety of women is undoubtedly a legitimate reason to regulate health care. However, to withstand scrutiny under Section 38, the statute must be ***reasonable and necessary*** to protect the health and safety of women. Wyo. Const. art. I, § 38(c). The Criminal TRAP Law does not satisfy this requirement.

Abortion is an extremely safe medical procedure. It is well established that abortion is

far safer than pregnancy and childbirth. Ex. 1, Anthony ¶¶ 17–18, 56. The risk of death associated with pregnancy and childbirth is an order of magnitude higher than the risk associated with abortions. Ex. 1, Anthony ¶ 56; Ex. 2, Hinkle ¶ 54. Pregnancy undeniably carries with it serious risks of complication, both for pregnancy-related illnesses and injuries and for the exacerbation of pre-existing illnesses. Ex. 1, Anthony ¶¶ 52–55; Ex. 2, Hinkle ¶¶ 49–53; *N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 855 (N.M. 1998) ("[C]arrying a pregnancy to term may aggravate pre-existing conditions.").

After conducting an exhaustive study of the medical evidence, the National Academies of Sciences, Engineering & Medicine unequivocally found that legal abortions in the United States "whether by medication, aspiration, D&E [dilation and evacuation], or induction—are safe and effective. Serious complications are rare." Ex. 1, Anthony at Attachment E (2018 Nat'l Acads. Sciences, Engineering, & Medicine Consensus Study Report) at 10, 77, 163–64; *see also* Ex. 3, Amaon ¶ 20; Ex. 5, Burkhart ¶ 25.

Nor is there any credible argument that *abortion in Wyoming* presents an unusual risk of harm for women. Under Wyoming law, the state office of vital records services maintains and publishes statistics for all abortions performed in Wyoming. Wyo. Stat. Ann. §§ 35-6-131, 35-6-132. This includes, among other things, statistics on the numbers and types of abortion procedures performed, as well as any complications associated with abortions. Wyo. Stat. Ann. §§ 35-6-131(a), 35-6-132(a). During the last four years—the period for which reports are publicly

available—zero patient complications were reported for all abortions in the state.[4]

For these reasons, and others, the *Johnson II* court determined that "the uncontested facts establish that abortion procedures are safe and effective." *Johnson II*, SJ Order ¶ 64. Thus, placing restrictions on abortion will do nothing to protect women, and forcing women to remain pregnant will increase health risks—the exact opposite of the legislature's claimed purpose.

The Criminal TRAP Law's restrictions on "surgical abortion facilities" serve no medical purpose. Outpatient clinics and physicians' offices are safe places to obtain abortions. *See* Ex. 1, Anthony ¶ 12; Ex. 2, Hinkle ¶ 44; Ex. 5, Burkhart ¶ 25. For over fifty years, physicians performing procedural abortions have not been subject to any special licensing requirements. Indeed, abortion clinics are already heavily regulated, including by federal regulations and standards. *See* Ex. 5, Burkhart ¶ 28. Nonetheless, House Bill 42 requires for the first time that all "surgical abortion facilities" be licensed as "ambulatory surgical centers" ("ASCs"). Wyo. Stat. Ann. § 35-6-202(a). This requirement is medically unnecessary because of the safe nature of abortion procedures. Ex. 1, Anthony ¶ 15 ("serious complications" from such procedures "are rare"); Ex. 2, Hinkle ¶ 44, and the lack of a ***surgical*** intervention for procedural abortions, Ex. 2, Hinkle ¶ 44; Ex. 5, Burkhart ¶ 10.

The purpose of ASCs is to provide an environment in which ***surgeries***, historically performed in hospitals, can be performed outside a hospital-based setting. *See* Ex. 2, Hinkle ¶ 42, 44 & n.5; Ex. 5, Burkhart ¶¶ 22–23; *see, e.g.*, Wyo. Admin. Code 048.0061.3 § 5 ("Construction

[4] The 2023 Induced Termination of Pregnancy ("ITOP") Report notes that for a small number of abortions during the four-year period, it was "unknown" if there were complications: in 2023, there were 572 abortions with no complications and one unknown; in 2022, there were 538 procedures with no complications and two unknowns; in 2021, there were 101 procedures with no complications and two unknowns; and in 2020, there were 87 procedures with no complications and four unknowns. *See 2023 Induced Termination of Pregnancy (ITOP) Report*, WYO. DEPT. OF HEALTH, at Table 3 (Jun. 30, 2024), *available at*: https://health.wyo.gov/wp-content/uploads/2024/07/WDH-2023-Induced-Termination-of-Pregnancy-Report.pdf.

Design Requirements for Healthcare Facilities"); Wyo. Admin. Code 048.0026.5 § 9 ("Construction/Remodeling" requirements for licensure of ASCs). Procedural abortions, however, are not surgeries: they do not require an incision into a woman's body, do not involve suturing, and do not entail exposure of sterile tissue to the external environment. Ex. 2, Hinkle ¶ 44; *see* Ex. 5, Burkhart ¶ 10. Procedural abortions have historically been performed in clinics or physicians' offices and do not require an operating room, or a hospital-based or related outpatient setting. Ex. 2, Hinkle ¶ 44; Ex. 5, Burkhart ¶ 25. These procedures are not commonly performed using general anesthesia, so designated space for equipment storage associated with general anesthesia is not typically required. *Id.* Procedural abortions simply do not require the size, layout, or equipment of a full operating theater, as is required for surgeries performed in ASCs.[5] *Id.*

Moreover, many of the burdensome construction requirements contained in the ASC regulations are intended to ensure and enhance the safety of surgeries that involve cutting into sterile body tissue by reducing the likelihood of infection. Ex. 2, Hinkle ¶ 44; *see* Ex. 5, Burkhart ¶¶ 21–25. Those requirements that are designed to maintain a sterile environment are unnecessary in abortion clinics (*e.g.*, restricted-access surgical suites, one-way traffic flow patterns, scrub equipment, and special ventilation units). Ex. 5, Burkhart ¶¶ 22–25. This is because procedural abortions do not involve an incision but instead entail inserting instruments through the vagina to access the uterus, which (like other bodily orifices) is not naturally a sterile space and is not meant to be sterilized in advance of a procedural abortion. Ex. 2, Hinkle ¶ 44. Under accepted medical practice for abortions, routine sterile precautions (*e.g.*, drapes, caps, masks, and gowns) are

[5] For these reasons, calling a procedural abortion a "surgical abortion," as the Legislature does, *e.g.*, Wyo. Stat. Ann. § 35-6-201(ix), is misguided, if not intentional distortion.

unnecessary. *Id.* Therefore, requirements aimed at maintaining a sterile operating environment are not necessary for procedural abortions.

Further, if protecting the health and safety of patients is the true intent of the legislation, it makes no sense to limit the statute to abortion procedures. There are other similar procedures performed in physicians' offices that are just as, if not more, invasive as procedural abortions, such as vasectomies, Mohs surgery for skin cancer, hysteroscopies, and endometrial ablations, yet they are not subject to House Bill 42. *See* Ex. 2, Hinkle Decl. ¶ 42. This very issue was raised by Representative Mike Yin, who proposed an amendment to add two other procedures to the bill—hysteroscopies and loop electrosurgical excisions—explaining, "if we are . . . keeping women safe in situations where the uterine lining is damaged, [then] they are all within a facility that they could have immediate, imminent care." Wyo. Legislature, *House Floor Session Day 12*, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 00:44:36–45:15. The amendment failed, demonstrating that the law is not intended to protect women's health during so-called invasive procedures. *Id*. at 00:46:23–46:36.

The Criminal TRAP Law's admitting privileges requirement serves no medical purpose. House Bill 42 requires a licensed physician performing a procedural abortion to have "admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the licensed physician is performing or will perform surgical abortions." Wyo. Stat. Ann. § 35-6-202(d)(ii). This requirement (1) has no medical benefit; (2) is inconsistent with accepted medical practice; (3) is more restrictive than requirements for ASCs; (4) fails to account for the timing of medical complications; and (5) does not improve the health and safety of women obtaining abortions.

First, admitting privileges are not tied to an enhanced quality of care. *See Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 613 (2016) (finding there are "without dispute other common prerequisites to obtaining admitting privileges that have nothing to do with [the] ability to perform medical procedures"). Obtaining privileges can be difficult, if not impossible, for a clinician, irrespective of their technical competence. *Id.* Admitting privileges are at the discretion of each hospital. Ex. 5, Burkhart ¶ 27. Some hospitals require that clinicians admit a certain number of patients to be affiliated with the hospital. *See Hellerstedt*, 579 U.S. at 612–13; Ex. 2, Hinkle ¶¶ 45–48; Ex. 5, Burkhart ¶¶ 28–30. Because abortion is a very safe procedure that only rarely results in hospitalization, providers who specialize in performing abortions are often unable to meet such requirements. Ex. 2, Hinkle ¶¶ 46–47; Ex. 5, Burkhart ¶ 29. As a result, abortion care providers will be denied privileges for reasons that have nothing to do with the provider's competence or quality of care, ultimately hindering Wyoming women's access to safe health care. *See Hellerstedt*, 579 U.S. at 613.

Second, the requirement for admitting privileges is inconsistent with accepted medical practices, which focus on ensuring a patient receives prompt medical care. Ex. 2, Hinkle ¶ 48; *see* Ex. 5, Burkhart ¶ 31. Accepted medical practice, as well as safety requirements established by federal agencies, requires that an abortion provider have a plan to provide prompt emergency services and, if complications arise, to transfer a patient to a nearby emergency facility. Ex. 2, Hinkle ¶ 48; Ex. 5, Burkhart ¶¶ 30–32; *see, e.g.*, American College of Obstetricians and Gynecologists, *Guidelines for Women's Health Care: A Resource Manual*, at 720 (4th ed. 2014); Nat'l Abortion Fed'n, *2024 Clinical Policy Guidelines*, PROCHOICE.ORG, at 62 (2024). This ensures that, in the rare instance when a woman experiences a complication during or immediately after an abortion and seeks hospital-based care, she can be treated appropriately by a trained

emergency-room clinician or the hospital's on-call specialist.[6] Ex. 2, Hinkle ¶ 48; Ex. 5, Burkhart ¶¶ 30–32.

For this reason, courts have consistently found "no evidence that women who have complications from an abortion recover more quickly or more completely or with less pain or discomfort if their physician has admitting privileges at the hospital to which the patient is taken for treatment of the complications." *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 793 (7th Cir. 2013); *see also Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 967–79 (W.D. Wis. 2015) (noting that complication rates from abortion are extremely low and finding that there was no record evidence that a clinician having admitting privileges at a local hospital would improve abortion outcomes, increase continuity of care, increase the quality of care, or increase accountability for providers of abortion); *see also Hellerstedt*, 579 U.S. at 610 (invalidating a ***less stringent*** Texas TRAP law based on significant evidence in the record demonstrating that "abortion in Texas was extremely safe with particularly low rates of serious complications and virtually no deaths occurring on account of the procedure"); *id.* at 611 (finding "nothing in Texas' record evidence [showing] that . . . the new law advanced Texas' legitimate interest in protecting women's health").

Third, the admitting privileges requirement is more restrictive than the parallel requirement applicable to all other ASCs. The Wyoming law that applies to ASCs provides that physicians need to maintain admitting privileges at *a* hospital, not at a hospital within ten miles of the center. Wyo. Admin. Code 048.0026.5 § 7(g)(iii). However, an amendment to align House Bill 42 with the law applied to all other ASCs was flatly rejected. *See* Wyo. Legislature, *House Floor Session*

[6] Should a patient require such care, federal law requires that emergency rooms in Medicare-participating hospitals provide care in such circumstances, regardless of whether a patient's physician has admitting privileges. 42 U.S.C. § 1395dd.

Day 12, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 00:38:29-43:19.

Moreover, ASCs may, in lieu of admitting privileges, have written transfer agreements with hospitals that ensure patients can be promptly treated in the event of complications. *See* Wyo. Admin. Code 048.0026.5 § 7(g)(iii) (providing that all ASCs have ***either*** all physicians performing the surgery maintain admitting privileges at a hospital ***or*** a written transfer agreement with a hospital). House Bill 42 contains no such option for abortion clinics. The legislature has not attempted to explain why abortion clinics must be subject to more restrictive admitting privileges requirements than ASCs, no doubt because the real reason is to target the one procedural abortion clinic in the state, which cannot comply with these requirements. *See infra*, Section I.B.

Fourth, the requirement for admitting privileges is useless for women who may need to seek care for complications that arise hours after the procedure. Even if physicians had admitting privileges at the hospital closest to the clinic, as with any emergency, it is likely that a woman would seek treatment at the nearest hospital to her at the time she experiences medical complications. In most cases, that will not be the hospital closest to the abortion clinic at which her provider maintains privileges. Ex. 5, Burkhart ¶ 33. Given the distances that many women travel to receive abortion care in Wyoming, *see id.*, many women who experience complications after the procedure may not be close to the clinic after several hours have passed. Ex. 2, Hinkle ¶ 48.

Fifth, House Bill 42's exceptions demonstrate it is not intended to protect the health and safety of women. Under the statute, a woman may have an abortion at a facility that does not meet the statute's requirements if she has an ectopic pregnancy, spontaneous abortion, or "cancer or another disease that requires a medical treatment which may be fatal or harmful to the unborn

baby." Wyo. Stat. Ann. §§ 35-6-201(a)(i)(A)–(D). If the law was really intended to ensure abortions are safe, the law would apply to all abortion procedures. These exceptions appear calculated to allow anti-abortion physicians to perform life-saving abortions without meeting the onerous, or impossible, requirements of the law—a purpose that is patently political and not to protect public health. Thus, there is no credible link between the admitting privileges requirement and the protection of women's health and safety.

Because none of the provisions in the Criminal TRAP Law are reasonable and necessary to protect women's health, it violates Section 38(c). In addition, the law does not in any way further its claimed purpose and therefore cannot satisfy either strict scrutiny or rational basis review.

(ii) The Criminal TRAP Law Unduly Infringes on the Constitutional Right of Women to Make Their Own Health Care Decisions.

The Criminal TRAP Law also violates Section 38(d) because it unduly infringes on women's right to make their own health care decisions. The Criminal TRAP Law will make procedural abortions difficult or impossible to obtain in Wyoming by forcing the closure of the only procedural abortion clinic. Indeed, procedural abortions are the only option for some Wyoming patients, for whom a medication abortion is not medically possible or because they are too far along in their pregnancy. *See* Ex. 3, Amaon ¶ 10. As a result, women will not have the ability to make their own decisions when it comes to essential health care involving abortion.

Requiring "surgical abortion facilities" to meet the standards for ASCs will have the devastating effect of restricting or delaying women's access to abortion providers. Ex. 5, Burkhart ¶ 26. The expense and time necessary to conform to House Bill 42's ASC requirements will force closure of the one licensed procedural abortion provider in Wyoming: Wellspring. Ex. 5, Burkhart ¶ 21. The closure of Wyoming's only procedural abortion facility will inevitably lead to increased

delays in obtaining abortions and, for some women, may block access entirely. Ex. 5, Burkhart ¶ 26; Ex. 7, Johnson ¶ 15. Many women will be required to travel farther to obtain an abortion, which is likely to lead to delay and further compromise their health. Ex. 5, Burkhart ¶¶ 19–21, 26; Ex. 7, Johnson ¶¶ 15–16. Thus, imposing the unreasonable and unnecessary ASC requirements on abortion facilities will harm women's health and safety in Wyoming by reducing access to safe and legal abortion. *Hellerstedt*, 579 U.S. at 615–24 (invalidating ***less stringent*** law requiring that abortion facilities satisfy minimum standards for ASCs where the record made clear that women would "not obtain better care or experience more frequent positive outcomes at an [ASC] as compared to a previously licensed facility").

The Criminal TRAP Law undermines, rather than furthers, the State's asserted purposes and unduly interferes with necessary and appropriate medical care for Wyoming women in violation of Section 38(d). Plaintiffs have demonstrated a substantial likelihood of success on their Section 38 claim, and the Court should grant a TRO enjoining enforcement of the Criminal TRAP Law.

3. The Court May Consider Evidence in Support of Plaintiffs' Section 38 Claim.

Although the language of the Criminal TRAP Law, on its face, violates Section 38, the Court may also engage in evidentiary review to find that the Criminal TRAP Law violates Section 38. Plaintiffs expect that the State will argue there are no relevant fact issues and no admissible evidence on the Section 38 claim, as they did in *Johnson II*. This Court should reject any such argument, as the *Johnson II* court did. *See Johnson II*, SJ Order ¶¶ 55–57 ("This Court finds no legal justification to ignore expert medical testimony, prevailing medical opinions, and the factual record presented by the parties. Ignoring evidentiary records risks the Court improperly substituting its judgment for that of the legislature.").

First, Plaintiffs have asserted "as applied" claims, which always raise factual questions concerning application of the law to the specific plaintiff or circumstances. *See, e.g.*, *Galesburg Const. Co. v. Bd. of Trustees of Mem'l Hosp. of Converse Cnty.*, 641 P.2d 745, 748 (Wyo. 1982) (noting that for an "as applied" constitutionality challenge, "the district court fully complied with the rule that all preliminary matters including factual questions must first be disposed of before the supreme court will consider a reserved constitutional question"); *State v. Rosachi*, 549 P.2d 318, 319–20 (Wyo. 1976) (declining to consider constitutional claims until trial court considered the evidence and disposed of "all factual questions"); *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, 371 P.2d 409, 417 (Wyo. 1962) ("[C]ourts, employing a standard of reasonableness as ***applied to the facts***, are the final arbiters as to whether the law is an unwarranted invasion of rights guaranteed by the Constitution.") (emphasis added); *see also Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1234 (10th Cir. 2023) ("As-applied vagueness challenges involve a factual dimension in that vagueness is determined in light of the facts of the case at hand.") (quoting *United States v. Ochoa-Colchado*, 521 F.3d 1292, 1299 (10th Cir. 2008)) (internal quotations omitted); *Robinson v. Lynch*, 2017 WL 1131896, at *2 (D. Utah Mar. 24, 2017) (looking to "particular facts" as "making plausible [plaintiff's] claim that [the challenged statute], as applied to the 'severable subcategory of persons' to which [the plaintiff] belongs, deprived [the plaintiff] of his constitutional rights").

Second, the facial claims also raise factual questions. Whether government action is "reasonable and necessary" (as required by Section 38) is fundamentally a factual question requiring courts to engage in evidentiary review. *See, e.g.*, *Griggs v. State*, 2016 WY 16, ¶¶ 57–72, 367 P.3d 1108, 1129–31 (Wyo. 2016) (conducting extensive evidentiary review to determine whether trial delay was "reasonable and necessary" under Sixth Amendment); *Estrada v. State*,

611 P.2d 850, 854 (Wyo. 1980) (same); *accord. Kirby Bldg. Sys. v. Mineral Explorations Co.*, 704 P.2d 1266, 1269–70 (Wyo. 1985) (reviewing evidence to determine if damages were "reasonable and necessary"); *Carbaugh v. Nichols*, 2014 WY 2, ¶¶ 16, 18, 315 P.3d 1175, 1178–79 (Wyo. 2014) (evidence required to determine whether medical expenses were "reasonable and necessary").

The question of "undue infringement" is similarly factual in nature. *See, e.g.*, *Jane L. v. Bangerter*, 102 F.3d 1112, 1116–18 (10th Cir. 1996) (considering factual evidence of law's purpose and impact in determining whether it imposed "undue burden"); *Meerscheidt v. State*, 931 P.2d 220, 229 (Wyo. 1997) (requiring evidence to substantiate that "probation condition placed an undue burden" on the appellant).

Furthermore, much of the evidence offered by Plaintiffs is independently admissible to demonstrate the medical meaning, or lack thereof, of the statutory terms. Under Wyoming law, "[w]hether a [statutory] term has . . . a technical meaning is a question of fact to be proved." *Powder River Coal Co. v. Wyo. Dept. of Revenue*, 2006 WY 137 ¶ 16, 145 P.3d 442, 448 (Wyo. 2006). Many of the terms in the Criminal TRAP Law have (or lack) technical meanings such that expert testimony is necessary to understand them and to understand whether they further the State's claimed interests. Ex. 5, Burkhart ¶ 20 (pointing to the unclear requirements around converting to a surgical facility); Ex. 2, Hinkle ¶¶ 29–30 (explaining how the Criminal TRAP Law is vague and unclear in its definition of abortion); Ex. 1, Anthony ¶ 24 (describing how the Criminal TRAP Law fails to understand the "complexity of [ ] medical decision-making" and creates "gray areas" for providers).

Moreover, because Section 38 creates express, fundamental rights, the Criminal TRAP Law must survive strict scrutiny, *see infra* Section I.B., which also raises factual issues. *Ailport*,

2022 WY 43, ¶¶ 7–8, 507 P.3d at 433 (indicating that "[b]ecause [the statute] interfered with [ ] fundamental rights, [the Court] applie[s] strict scrutiny") (quoting *Vaughn v. State*, 2017 WY 29, ¶ 26, 391 P.3d 1086, 1095 (Wyo. 2017)). "To be a compelling interest, the State must show that the alleged objective was the legislature's 'actual purpose' for the discriminatory classification . . . and the legislature must have had a strong basis in evidence to support that justification before it implements the classification." *Shaw v. Hunt*, 517 U.S. 899, n.4 (1996); *see also United States v. Hardman*, 297 F.3d 1116, n.20 (10th Cir. 2002) ("Several district courts have found least restrictive means to be a purely factual question. . . . The government bears the burden of building a record that proves that the statutory and regulatory scheme in question is the least restrictive means of advancing the government's compelling interests.").

While the State cannot escape the overwhelming evidence demonstrating that the Criminal TRAP Law violates Section 38, this evidence is not necessary to find such a violation, because the terms of the statute itself establishes that it does not further any of the State's asserted interests and unduly burden a woman's right to make her own health care decisions.

B. Wyoming's Criminal TRAP Law Violates Wyo. Const. Art. I, § 2, 3, 34; Art. III, § 27 – Equal Protection.

The Criminal TRAP Law violates Wyoming's equal protection clauses by (1) subjecting women seeking abortions and abortion providers to more stringent requirements than other similarly situated individuals and entities and (2) by specifically targeting Plaintiff Wellspring in violation of Wyoming's prohibition on special legislation.

The Wyoming Constitution contains multiple provisions guaranteeing the right to equal protection under the law. Article I, section 34 provides that "[a]ll laws of a general nature shall have a uniform operation," Wyo. Const. art. I, § 34. Article 1, section 2 states that "[i]n their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal."

Wyo. Const. art. I, § 2. Article I, section 3 requires that all laws "affecting the political rights and privileges of [their] citizens shall be without distinction of race, color, sex, or any circumstance or condition *whatsoever* other than individual competency." Wyo. Const. art. I, § 3 (emphasis added). The Wyoming Supreme Court has highlighted the importance of these broad provisions, noting that "[e]quality . . . is emphatically, if not repeatedly, set forth in the Wyoming Constitution." *Johnson v. State Hearing Examiner's Off.*, 838 P.2d 158, 164 (Wyo. 1992) (quotation marks omitted).

As a result, Wyoming's Constitution contains a "particular call for equal protection" that "protect[s] people against legal discrimination more robustly than does the federal constitution." *Id.* at 165; *see also Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 332 (Wyo. 1980) ("A state may enlarge rights under the Fourteenth Amendment announced by the Supreme Court of the United States, which are considered minimal, and thus a state constitutional provision may be more demanding than the equivalent federal constitutional provision.") (citations omitted).

Equal protection claims are evaluated under two different standards of review, depending on the rights asserted and the class of individuals asserting the claim. *See Allhusen v. State By & Through Wyo. Mental Health Pros. Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995); *Washakie*, 606 P.2d at 333. Where the interest affected by the offending statute relates to a "fundamental interest" or suspect class, strict scrutiny is required "to determine if [the classification] is necessary to achieve a compelling state interest." *Id.* For "ordinary interests," there must be a "rational relationship between a classification made by the statute" and "a legitimate state interest." *Id.* This rational relationship "must rest not on conjecture but must be supported by something of substance." *Nehring*, 582 P.2d at 77.

Because the Criminal TRAP Law affects a fundamental interest—the right to make one's own health care decisions protected under Section 38—the law must withstand strict scrutiny to pass constitutional muster. *Allhusen*, 898 P.2d at 885; *see Johnson II*, SJ Order ¶ 34. However, under either standard, the Criminal TRAP Law runs afoul of the rights to equal protection enshrined in the Wyoming Constitution.

1. House Bill 42 Violates the Equal Protection Rights of Women Seeking Abortions and Procedural Abortion Providers.

House Bill 42 violates the equal protection rights of women seeking abortion care and procedural abortion providers. The statute requires that any physician who performs a procedural abortion at a "surgical" abortion clinic has "admitting privileges at a hospital located not more than ten (10) miles from the abortion facility." Wyo. Stat. Ann. § 35-6-203(c). By contrast, all other ASCs may have ***either*** all physicians performing the surgery maintain admitting privileges at **a** hospital ***or*** a written transfer agreement with a hospital. *See* Wyo. Admin. Code 048.0026.5 § 7(g)(iii). As a result, House Bill 42 imposes a heightened requirement on abortion providers that is not similarly imposed on other ASCs.

Proponents of the near identical statute last year admitted as much on the Wyoming Senate Floor: "[t]he intent here is to be narrowly focused on the abortion centers that make this as their business model and their focus, and not make an overly broad application." *See* Wyo. Legislature, *Senate Floor Session Day 13*, YOUTUBE (Feb. 28, 2024), https://www.youtube.com/watch?v=zU0EVxNQr_w at 01:12:51–01:13:20. This inconsistency was highlighted again when House Bill 42 was debated in the general legislative session this year. *See* Wyo. Legislature, *House Floor Session Day 12*, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 00:38:44-43:17 ("We have statutes that govern ambulatory surgical centers that require admitting privilege in the hospital without setting specific requirements. . . .

There just may not be a hospital within ten miles, so that may be the objective so that nobody can do these types of procedures.").

As a result, House Bill 42 triggers the constitutional provisions for equal protection "in that, on the one hand, it singles out a limited class of health care providers for special protection," i.e., other ASCs, "while on the other hand, places an added burden on [procedural abortion clinics]." *Hoem v. State*, 756 P.2d 780, 782 (Wyo. 1988). The law therefore must satisfy the strict scrutiny test. But as demonstrated above, the requirement for admitting privileges does not further ***any*** government interest, much less a compelling one.

And even if the State could show that House Bill 42 furthers a compelling interest, it must also show that the law is neither overinclusive nor "fatally underinclusive." *In re Neely*, 2017 WY 25, ¶ 29, 390 P.3d 728, 739 (Wyo. 2017) (referencing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993)). In other words, House Bill 42 must be "narrowly tailored" to the stated interest of promoting public health and safety for women. *Id.* House Bill 42 is not "narrowly tailored" to the State's stated goal.

In *Church of the Lukumi Babalu Aye*, the Supreme Court found that ordinances prohibiting animal sacrifice were not "narrowly tailored" when the State permitted many other types of animal deaths, such as euthanasia of unwanted animals. 508 U.S. at 543–44. The challenged ordinances were, therefore, "underinclusive" of the city's professed governmental interest in protecting the public health and preventing cruelty to animals. *See* 508 U.S. at 543–44; *see also Nation v. Giant Drug Co*., 396 P.2d 431, 437 (Wyo. 1964) (finding ordinance prohibiting businesses which sold personal property from being open for business on Sunday, but excluding other stores which sold similar items, was unreasonable, arbitrary, capricious, discriminatory, and oppressive). Here, as in *Church of the Lukumi Babalu Aye*, the State cannot point to any explanation for why abortion

clinics are subject to heightened requirements when clinics that provide more invasive procedures are not similarly regulated. And like in *Giant Drug Co.*, the State cannot explain why it would continue to permit certain providers administering health care services but not others performing the same services. *See supra* Section I.A.2.i (noting legislative history indicating House Bill 42 was purposefully crafted to keep pro-life doctors who provide procedural abortions in "clinics" and "offices" protected); *infra* Section I.B.2 (explaining how House Bill 42 is unconstitutional special legislation against Wellspring).

As a result of applying heightened requirements exclusively to abortion clinics to allegedly promote the health and safety of women, House Bill 42's "under inclusiveness undermines the [State's] claim of narrow tailoring" and therefore violates equal protection. *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1268–69 (10th Cir. 2008) (Colorado's exclusion of "pervasively sectarian" institutions of higher education from state scholarship programs was "underinclusive" and not "narrowly tailored" to achieve its goal of saving taxpayers from supporting students who chose religious education because State only excluded certain religious institutions); *Does 1-11 v. Bd. of Regents of Univ. of Colorado*, 100 F.4th 1251, 1278–79 (10th Cir. 2024) (finding state's policy was "underinclusive" and therefore not "narrowly tailored" when policy granted exemptions to a COVID-19 vaccine policy to some religions but not others).

Even if the Court applies rational basis review, House Bill 42 cannot withstand constitutional scrutiny. As demonstrated, *supra* Section I.A.2, the law bears no relationship—rational or otherwise—to the stated goal of protecting women's health—*because it harms rather than protects women's health*. The statute is silent as to how admitting privileges are related to promoting public health and safety (and they are not) or why a ten-mile distance to a hospital is rational for these low-risk procedures (it is not). Ex. 2, Hinkle ¶ 48 (noting that the requirements

are "inconsistent with prevailing medical practices, which focus on ensuring prompt medical care and continuity of care and do not require that a physician have admitting privileges at the local hospital"). Indeed, during debates on House Bill 42, legislators questioned how the ten-mile radius made any sense, given that it is inconsistent with the statutory definition of an ASC, which imposes no set radius, and other statutes, which include a "thirty-mile radius." Wyo. Legislature, *House Floor Session Day 12*, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 00:41:203–41:49. Even if "[t]here is no question that the legislature has a legitimate interest in protecting the health of the citizens of Wyoming," House Bill 42 cannot survive even rational basis review when "the legislation at issue [did not] constitute[ ] a reasonable and effective means of doing so." *Hoem*, 756 P.2d at 783.

2. House Bill 42 Targets a Single Establishment, Wellspring, in Violation of Wyoming's Prohibition on Special Legislation.

House Bill 42 also violates equal protection because it was specifically crafted to target the only remaining procedural abortion clinic in Wyoming, Plaintiff Wellspring, which is impermissible under the constitutional prohibition on special legislation. *See* Wyo. Const. art. III, § 27. Special legislation refers to statutes that "do[ ] not have a uniform operation" and "operate[ ] upon and affect[ ] only a fraction of the persons . . . encompassed by a classification." *Baessler v. Freier*, 2011 WY 125, ¶ 16, 258 P.3d 720, 726 (Wyo. 2011). Specifically, this legislation "relates [ ] to particular persons . . . [that] are separated by any method of selection from the whole class to which the law might, but for such legislation, be applied." *Id.*

The prohibition of special legislation is founded in "a guarantee of equal protection" and is analyzed under the same standard as an equal protection claim. *Bd. of Cnty. Comm'rs v. Geringer*, 941 P.2d 742, 746–47 (Wyo. 1997). As this statute affects the fundamental constitutional right to health care, Wyo. Const. art. I § 38, strict scrutiny is the proper standard of

review, *Washakie*, 606 P.2d at 333; *see also Mills v. Reynolds*, 837 P.2d 48, 53 (Wyo. 1992) ("If a fundamental right is implicated or if the classification is inherently suspect, we employ a strict scrutiny standard."); *supra* Section I.A.2.

House Bill 42 imposes onerous requirements on a single abortion facility while leaving all other reproductive care—including procedural abortions performed by other physicians—unaffected. *See supra* Section I.A.2. This unequal treatment violates the longstanding and widespread prohibition on special legislation. The Wyoming Supreme Court has unambiguously held that different regulation of parties who perform the same services constitutes a violation of Wyoming's prohibition on special legislation. *See Allhusen*, 898 P.2d at 886. In *Allhusen*, the State enacted a law whereby publicly employed mental health professionals were exempt from certain licensing requirements while their privately employed counterparts were not. *Id*. Both forms of counselors provided similar services, and the plaintiffs argued that the disparate treatment was arbitrary discrimination against privately employed individuals. *Id.* The Wyoming Supreme Court agreed, holding that, despite the legitimate interest in "prescribing reasonable qualifications for occupations requiring special knowledge or skill and affecting public health," there was "no real difference" between unlicensed public counselors and unexempted private counselors. *Id.* at 887. The State's purported objective in "assuring public health" was not served by the arbitrary and unsupported classifications in the statute. *Id.* at 887–88. As such, the law was "contrary to guarantees of equal protection" and the prohibition on special legislation. *Id.* at 890.

Imposition of ASC requirements to Wellspring's facility would be onerous and would require significant alterations, including, among many other things, an operating room of a specific size and location, with minimum clearance standards, a minimum number of patient recovery rooms, and heightened standards for equipment storage and safety. *See* Facility Guidelines

Institute, Guidelines for Design and Construction of Health Care Facilities, § 3.7 Outpatient Surgical Facilities, 221–29 (2006 ed.);[7] Ex. 5, Burkhart ¶ 23 (listing other ASC licensing requirements that "make sense for facilities that provide the types of invasive surgeries that are typically performed in hospitals but make no sense for [Wellspring's] facility"). These excessive requirements are "unnecessary" for relatively simple, safe, and uncomplicated procedures, such as procedural abortions. Ex. 2, Hinkle ¶ 42; Ex. 5, Burkhart ¶ 25.

Similar procedures are performed every day in physicians' offices across the State that are not subject to ASC requirements. For example, physicians can perform procedures like a vasectomy, Mohs dermatological surgery, hysteroscopy, and endometrial ablation in their offices and clinics; there is no similar requirement that they be performed in an ASC. Ex. 2, Hinkle ¶ 42. Many procedures, such as hemorrhoid removals, have higher complication rates than procedural abortions do but are not subject to this burdensome requirement. Ex. 2, Hinkle ¶ 42. The statute makes no attempt to explain why procedural abortions should be performed only in ASCs, despite abortion being safer and less invasive than many other procedures that are not subject to this requirement. House Bill 42's legislative history also demonstrates that the statute irrationally and arbitrarily discriminates against Wellspring. *See, e.g.*, Wyo. Legislature, *Senate Floor Session Day 26*, YOUTUBE (Feb. 19, 2025), https://www.youtube.com/watch?v=TuJmflubUa4, at 00:52:18–53:26 (stating that ASC licensing mandates "weren't intending to capture" "doctors, clinics" who perform procedural abortions in a "doctor's office"). Accordingly, the distinction between a provider who must be subject to heightened construction standards and admitting privileges and one who does not have to be is based purely on whether that provider is the sole

[7] These specifications come from the Facility Guidelines Institute ("FGI"), which most states adopt. According to the FGI, Wyoming "uses the 2006 FGI *Guidelines* to regulate . . . outpatient surgery centers," including ASCs. *See Adoption of FGI Guidelines*, The Facilities Guidelines Institute (Aug. 21, 2024), https://fgiguidelines.org/guidelines/adoption-map/.

procedural abortion clinic in the state. (Wyoming now has only a single operating abortion clinic within its nearly 100,000-square-mile borders. Ex. 5, Burkhart ¶ 8.)

The Criminal TRAP Law provides no justification, nor can the State point to any evidence, that Wellspring should be more strictly regulated than *any* other provider of outpatient medical procedures in the state. Instead, Wyoming women and physicians are left with the State's bare assertion that this discrimination is required for unquantifiable and unknown risks. Such arbitrary and irrational treatment targeting a single entity cannot stand in the face of Wyoming's clear constitutional prohibition against special legislation.

C. Certain Provisions of Wyoming's Criminal TRAP Law Are Void for Vagueness.

"A statute may be challenged for constitutional vagueness 'on its face' or 'as applied' to particular conduct." *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031 (Wyo. 2004) (citations omitted). In challenging a statute for facial vagueness, a plaintiff must demonstrate that "the statute reaches a substantial amount of constitutionally protected conduct, or that the statute specifies no standard of conduct at all." *Id.* (quoting *Ochoa v. State*, 848 P.2d 1359, 1363 (Wyo. 1993)). In reviewing a statutory challenge for vagueness on its face, "the court examines the statute not only in light of the complainant's conduct, but also as it might be applied in other situations." *Id.* at 1031–32 (citations omitted).

Penal statutes such as the Criminal TRAP Law are unconstitutionally vague unless they "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory behavior." *Griego v. State*, 761 P.2d 973, 975 (Wyo. 1988) (citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). Because the Criminal TRAP Law regulates the conduct of health care providers, evidence of how providers understand the terms is relevant to determining the vagueness claim.

See United States v. Richter, 796 F.3d 1173, 1189 (10th Cir. 2015) ("[W]here a statute or regulation is aimed at a class of people with specialized knowledge, the specificity required by due process is measured by the common understanding of that group."). Moreover, "[w]hether a [statutory] term has . . . a technical meaning is a question of fact to be proved." *Powder River Coal*, 2006 WY ¶ 16, 145 P.3d at 448.

The Criminal TRAP Law contains vague definitions that make it impossible to "understand what conduct is prohibited" and, instead, plainly invite "arbitrary and discriminatory behavior." *Griego*, 761 P.2d at 975. The Criminal TRAP Law generally defines abortion as "the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the pregnancy of a woman." Wyo. Stat. Ann. § 35-6-201(a). The statute excepts from this definition the (1) removal of a "dead unborn baby" caused by spontaneous abortion or intrauterine fetal demise, (2) treatment of an ectopic pregnancy, and (3) treatment for a pregnant patient for "cancer or another disease that requires medical treatment . . . which may be fatal or harmful to the unborn baby." Wyo. Stat. Ann. § 35-6-201(a)(i). Regarding the exception for removing an "dead unborn baby," that term contains no workable definition in the medical community, and "countless examples of medical conditions [exist] where a live birth will not result from the pregnancy, but which may not be described as a 'dead unborn baby' (or an ectopic pregnancy)," Ex. 1, Anthony ¶ 42; Ex. 2, Hinkle ¶ 32, such as in the case of treating molar pregnancies, a blighted ovum, and a woman who is hemorrhaging but is otherwise carrying a viable fetus, Ex. 1, Anthony ¶ 43; *see also* Ex. 2, Hinkle ¶¶ 32–36.

It is entirely unclear whether any of these situations would be protected under the exception for removing a "dead unborn baby caused by miscarriage or intrauterine fetal demise." Ex. 1, Anthony ¶¶ 43–44; Ex. 2, Hinkle ¶ 36; *see* Wyo. Stat. Ann. § 35-6-201(a)(B). If a physician is

unable to determine if a miscarrying patient falls under this exception, the physician will have to make an impossible decision between failing to provide potentially life-saving care to a patient or risking the loss of their license, a hefty fee, and potential imprisonment.

The Criminal TRAP Law therefore is unconstitutionally vague, both on its face and as applied.

II. WITHOUT A TRO, WYOMING'S CRIMINAL TRAP LAW WILL CAUSE IRREPARABLE HARM TO PLAINTIFFS, THEIR PATIENTS, THEIR CLIENTS, AND OTHER WYOMINGITES.

If allowed to take effect, Wyoming's Criminal TRAP Law will irreparably harm not just Plaintiffs, but also the Wyomingites whose interests they represent, who will be denied constitutional rights they have otherwise enjoyed. Plaintiff physicians, as well as Chelsea's Fund, Just The Pill, and Wellspring, have standing to represent the interests of Wyoming women seeking abortion care. *June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299, 318, (2020), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 (2022) ("We have long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations."); *Eisenstadt v. Baird*, 405 U.S. 438, 445–46 (1972); *Barrows v. Jackson*, 346 U.S. 249 (1953); *Aid for Women v. Foulston*, 441 F.3d 1101, 1114 (10th Cir. 2006) (collecting cases).

"Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019); *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (emphasizing "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary" (quoting *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001))). This applies especially to abortion: "[T]he abortion decision is one that simply cannot be

postponed, or it will be made by default with far-reaching consequences." *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *Johnson II*, SJ Order ¶ 74.

Even if a separate showing of irreparable injury were required, Plaintiffs have demonstrated that injury here. If a TRO is not entered by this Court, the Criminal TRAP Law will have a catastrophic impact on Plaintiffs and many other Wyomingites. The law will force Plaintiff Wellspring to shutter its clinic, Ex. 5, Burkhart ¶¶ 19, 21, 26, and compel many Wyomingites seeking abortion to carry pregnancies to term against their will with all the physical, emotional, and financial costs that entails, s*ee, e.g.*, Ex. 1, Anthony ¶¶ 53–58; Ex. 2, Hinkle ¶¶ 11, 49–63; Ex. 7, Johnson ¶ 15.

Even Wyomingites who are ultimately able to obtain an abortion because they have been able to scrape together the resources to travel out of state will suffer irreparable harm due to the delays and undue barriers in seeking care. Ex. 2, Hinkle ¶ 11; Ex. 4, Lichtenfels ¶ 18; Ex. 7, Johnson ¶ 15. Critically, Drs. Anthony and Hinkle, Wellspring, and their respective staffs will suffer harms that cannot possibly be compensated, including the serious risk of criminal prosecution and the loss of licensure which could bar them from practicing medicine anywhere in the country. Ex. 1, Anthony ¶¶ 25, 66; Ex. 5, Burkhart ¶ 16; *see also* Ex. 2, Hinkle ¶ 69. These harms can only be avoided through issuance of the requested TRO.

A. Licensing Requirements Will Irreparably Harm Plaintiff Wellspring by Effectively Stopping Wellspring's Operations.

House Bill 42's ASC licensing provision is designed to shut down Wellspring's operations. House Bill 42 would require Wellspring to undergo substantial and costly renovations and reconstruction, which will shut down Wellspring temporarily at a minimum and very possibly permanently, given the onerous, vague, and shifting requirements for licensure as an ASC. Ex. 5, Burkhart ¶¶ 20–26. For example, Wyoming's Administrative Rules require rooms for post-

anesthesia recovery with a minimum clear area of 360 square feet, designated supervisory recovery lounges, at least six-foot wide public corridors, staff clothing change areas, specific exhaust ventilation, building water systems designed in accordance with guidelines published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and fire-rated dampers activated by smoke and heat in particular, among many other requirements—none of which is necessary for Wellspring, and none of which Wellspring currently has. Ex. 5, Burkhart ¶¶ 22–24.

Further, Wyoming's ASC requirements (1) are not easily accessible—the Department of Health website recommends contacting an engineer, suggesting there may be requirements not publicly available or committed to writing—and (2) are confusing and vague—in one chapter of the Administrative Rules, the 2006 edition of the Facility Guidelines Institute guidelines is required, while in another chapter, the 1992–93 edition is referenced (although not by name). Ex. 5, Burkhart ¶¶ 22–23; *see also* Ex. 2, Hinkle ¶¶ 43–44. "Wellspring will face an impossible choice: to no longer provide the primary services that [it is] set up and hold[s itself] out as available to provide to patients, thus losing goodwill and revenue to cover operating costs, or to provide those services and expose [its] staff to criminal prosecution and loss of licensure." Ex. 5, Burkhart ¶ 14.

Even if Wellspring could meet the requirements for licensure, patients will be denied access to medical care during the period needed for renovations: those with scheduled procedures will lose their appointments, and some will lose their window of opportunity to obtain their abortion procedure and be forced into pregnancy, with all its risk factors. Ex. 5, Burkhart ¶¶ 15, 19. For some women, the procedural abortion care offered by Wellspring is the only kind of abortion they are eligible to receive. *Id.* ¶ 19.

Further, House Bill 42's admitting privileges requirement also poses a significant hurdle for Wellspring. Many of Wellspring's Wyoming-licensed physicians are located in other parts of the state or out of state, making it virtually impossible for them to get admitting privileges at the hospital near the clinic. Ex. 5, Burkhart ¶ 27. Because abortions are safe and have such a low complication rate, Wellspring's providers likely cannot obtain privileges at any hospital, let alone one within ten miles, which often require a certain minimum number of patient admittances. Ex. 5, Burkhart ¶ 29; *see* Ex. 2, Hinkle ¶ 46. The harm from the licensing and admitting privilege requirements is all the more acute because only abortion providers are subject to them. And that means only Wellspring, Wyoming's sole procedural abortion provider, will be affected.

B. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from Forced Pregnancy and Parenting.

The consequences of Wyoming's Criminal TRAP Law extend beyond the deprivation of access to time-sensitive medical care. If the Criminal TRAP Law goes into effect, Wyomingites will be forced to remain pregnant against their will. Many will ultimately be forced to carry their pregnancies to term. These patients will suffer a range of irreparable physical, mental, and economic consequences, and there is no monetary remedy that can address the impact of forced pregnancy on health and bodily autonomy. *See, e.g.*, Ex. 1, Anthony ¶¶ 53–58; Ex. 2, Hinkle ¶¶ 11, 49–63; Ex. 7, Johnson ¶¶ 16–18. Experiencing forced pregnancy and parenting can have severe consequences for Wyomingites—pregnancy carries risks to women's health and can exacerbate preexisting medical and mental health conditions, and labor and childbirth are themselves significant medical events with many risks. Ex. 1, Anthony ¶¶ 52–56. Forced pregnancy and parenting will also impose negative economic effects on Wyoming families, and women who seek but are denied abortion care have historically had less success in their future pursuits as well. *Id.* ¶¶ 57–58. Plaintiff Ms. Johnson is a charge registered nurse and a Wyomingite woman of

reproductive age interested in expanding her family who would be unable to receive or provide evidence-based health care. Ex. 7, Johnson ¶¶ 1, 5, 10, 12–13, 16–18. Plaintiff Dr. Anthony is an OB/GYN physician licensed and practicing in Wyoming who will be unable to prevent these irreparable harms of forced pregnancy and parenting to Wyoming women if the requirements of the Criminal TRAP Law are effective. Ex. 1, Anthony ¶ 6. Plaintiff Dr. Hinkle is an OB/GYN physician practicing with Cheyenne Women's Clinic, PC who will be unable to offer the full range of recommended medical options for pregnant patients, including those not seeking to terminate their pregnancies. Ex. 2, Hinkle ¶¶ 67–69. Plaintiff Wellspring is an organization that provides critical medical care to pregnant women in Wyoming that will now be unable to provide such care. Ex. 5, Burkhart ¶ 18. Plaintiff Chelsea's Fund will need to increase financial support and resources to be able to support women that must find abortion care elsewhere, Ex. 4, Lichtenfels ¶¶ 21–22. And Plaintiff Just The Pill is a nonprofit organization and telemedicine provider of abortion, contraception, and other reproductive health care that will face substantial obstacles in providing quality and ethics-based care for its Wyoming patients, who require referrals for procedural abortions, and whom Just The Pill will likely now have to refer out of state for procedural abortions, given the impediments to Wellspring's operations. Ex. 3, Amaon ¶ 32. Just The Pill will also be unable to prevent irreparable harms of forced pregnancy and parenting to those women who cannot afford or access such out-of-state travel and care. *Id.*

Pregnancy is a significant medical condition that the Criminal TRAP Law will force on Wyomingites. Even in an uncomplicated pregnancy, an individual experiences a wide range of physiological challenges. Ex. 1, Anthony ¶¶ 9, 53, n.33; Ex. 2, Hinkle ¶ 50. Individuals experience a dramatic increase in blood volume, a faster heart rate, increased production of clotting factors, breathing changes, digestive complications, substantial weight gain, and a growing uterus.

Ex. 1, Anthony ¶ 53; Ex. 2, Hinkle ¶ 50. These and other changes put pregnant patients at greater risk of blood clots, nausea, hypertensive disorders, and anemia (among other complications). Ex. 2, Hinkle ¶ 50.

Pregnancy can also aggravate preexisting health conditions, including hypertension and other cardiac diseases, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary diseases. Ex. 1, Anthony ¶ 53; Ex. 2, Hinkle ¶ 51. Pregnancy may also lead to the development of new and serious health conditions as well, such as hyperemesis gravidarum, preeclampsia, deep-vein thrombosis, and gestational diabetes. Ex. 1, Anthony ¶ 53; Ex. 2, Hinkle ¶ 51. Pregnancy can also induce or exacerbate mental health conditions. Ex. 1, Anthony ¶ 53; Ex. 2, Hinkle ¶ 52. Some people with a history of mental illness experience a recurrence of their illness during pregnancy. Ex. 1, Anthony ¶ 54; Ex. 2, Hinkle ¶ 52.

A number of pregnant patients also face an increased risk of intimate partner violence. Ex. 2, Hinkle ¶ 53; Ex. 1, Anthony ¶ 55. Indeed, homicide—most frequently caused by an intimate partner—has been identified as a leading cause of maternal mortality. Ex. 2, Hinkle ¶ 53; Ex. 1, Anthony ¶ 55. Wyomingites who face domestic violence have no avenue to terminate an unintended pregnancy unless they meet the Criminal TRAP Law's extremely narrow and vague exceptions, none of which allow a woman to choose abortion to protect herself from possible trauma and violence.

Labor and childbirth are also significant medical events with many risks. Ex. 1, Anthony ¶ 56; Ex. 2, Hinkle ¶ 54. The risk of mortality from pregnancy and childbirth is over twelve times greater than for legal pre-viability abortion. Ex. 1, Anthony ¶ 56; Ex. 2, Hinkle ¶ 54. Complications during labor occur at a rate of over 500 per 1,000 hospital stays, and the vast majority of childbirth delivery stays have a complicating condition. Ex. 1, Anthony ¶ 56; Ex. 2,

Hinkle ¶ 55. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. Ex. 1, Anthony ¶ 56; Ex. 2, Hinkle ¶ 56.

Other unexpected adverse events include hemorrhaging leading to blood transfusion, ruptured uterus or liver, stroke, unexpected hysterectomy (the surgical removal of the uterus), and perineal laceration (the tearing of the tissue around the vagina and rectum), the most severe of which can result in long-term urinary and fecal incontinence and sexual dysfunction. Ex. 2, Hinkle ¶¶ 56–57. Any anesthesia or epidural administered during labor can also lead to additional risks, including severe headaches caused by the leakage of spinal fluid, infection, and nerve damage around the injection site. Ex. 2, Hinkle ¶ 58. In Wyoming, more than one in five deliveries occur by caesarean section ("C-section"), rather than vaginally, requiring an open abdominal surgery which carries significant risks of hemorrhage, infection, blood clots, and injury to internal organs. Ex. 2, Hinkle ¶ 59.

The Criminal TRAP Law requires pregnant individuals to face and endure these risks—an irreparable injury that only an injunction can prevent.

C. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from the Criminal TRAP Law's Delayed Care, Increased Financial Burdens, and Cruel Treatment.

Although some women forced to remain pregnant may eventually be able to obtain abortions, they will also suffer irreparable injury from the Criminal TRAP Law's delay of care. Those who will have to travel out-of-state for procedural abortions—because of House Bill 42's intended shutdown of Wellspring—will likely receive care later in their pregnancies than if they otherwise had access to abortion in Wyoming. Ex. 1, Anthony ¶ 61; Ex. 4, Lichtenfels ¶¶ 18–19; *see also* Ex. 3, Amaon ¶¶ 8, 32. Because many pregnancy complications are not excluded from the statutory requirements, women will experience delays and potentially the denial of critical health care. Ex. 2, Hinkle ¶¶ 10, 34; Ex. 3, Amaon ¶ 19. Wyomingites forced to travel out of state

for a procedural abortion will suffer additional costs and burdens of substantial travel. Ex. 1, Anthony ¶ 61; Ex. 4, Lichtenfels ¶¶ 18–19. At this time, the nearest clinics providing abortion outside of Wyoming are hundreds of miles away. Ex. 1, Anthony ¶ 60; Ex. 4, Lichtenfels ¶¶ 18–19. And Plaintiff Chelsea's Fund will be irreparably harmed as it will need to increase financial support and resources to be able to support women that must find abortion care elsewhere. Ex. 4, Lichtenfels ¶¶ 21–22.

Finally, patients will lose the availability of "medical treatment from the qualified providers of their choice." *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018). Each of these harms is irreparable. As the United States Court of Appeals for the Tenth Circuit has recognized, a "disruption or denial" of a patient's "health care cannot be undone after a trial on the merits." *Andersen*, 882 F.3d at 1236 (citation omitted); *accord. Harris v. Bd. of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004).

III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES SUPPORT ISSUANCE OF AN INJUNCTION.

Plaintiffs and their patients face far greater harm while Wyoming's Criminal TRAP Law is in effect than Defendants will face if the Court preserves the status quo. The State has no "interest in enforcing a law that is likely constitutionally infirm." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). In addition, the public has an interest in a speedy injunction to block a law that fundamentally upsets the longstanding status quo on which Wyoming women and their families have relied for nearly five decades. The purpose of a preliminary injunction is "to preserve the status quo until the merits of an action can be determined." *CBM Geosolutions*, 2009 WY ¶ 7, 215 P.3d at 1057 (quoting *Weiss v. State ex rel. Danigan*, 434 P.2d 761, 762 (Wyo. 1967)). Here, the status quo is that Wyoming women can obtain a lawful abortion pursuant to Wyo. Stat. Ann. § 35-6-102(a) and have been able to do so pursuant to that statute

since 1977. The balance of equities and public interest thus weigh decisively in Plaintiffs' favor, further demonstrating that a temporary restraining order is appropriate.

IV. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER WITHOUT BOND.

Under Wyo. R Civ. P. 65(c) "if the district court finds no likelihood of harm to the defendant, no bond is necessary." *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶ 98, 275 P.3d 438, 466 (Wyo. 2012). At the TRO and preliminary injunction stage of proceedings on the Trigger Ban and the Criminal Abortion and Medication Bans, the District Court found that no bond was necessary, and no Defendant requested bond. *See Johnson et al. v. State of Wyoming et al.*, Civil Action No. 18732 (9th Jud. Dist. Ct., Teton Cnty. Wyo., July 28, 2022) (Order Granting Motion for Preliminary Injunction ¶ 48); *Johnson II*, Order Granting Motion for TRO ¶ 63 (Apr. 17, 2023).

Plaintiffs request this Court to use its discretion to waive the security requirement. Here, the relief sought will result in no monetary loss for Defendants and is necessary to protect the constitutional rights of Plaintiffs, their patients, and women in Wyoming.

CONCLUSION

Because the Criminal TRAP Law violates longstanding constitutional rights to make health care decisions, of equal protection, and against vague criminal statutes, and because Plaintiffs will suffer irreparable injury if the law is enforced, the Court should enter a TRO enjoining enforcement of the statute, both facially and as applied to the Plaintiffs.

WHEREFORE, Plaintiffs request entry of a temporary restraining order enjoining Defendants from enforcement of the Wyoming Criminal TRAP Law, pending trial in this matter.

RESPECTFULLY SUBMITTED this 28th day of February 2025.

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CERTIFICATE OF SERVICE

This is to certify that on the date of filing a true and correct copy of the foregoing was served as follows:

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