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IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT

IN AND FOR TETON 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; MATT CARR, Sheriff Teton County, Wyoming; and MICHELLE WEBER, Chief of Police, Town of Jackson, Wyoming,

Defendants.

Case No. ____________________

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

TABLE OF CONTENTS

Page(s)

INTRODUCTION AND DISPOSITION REQUESTED **1**

STATEMENT OF FACTS **2**

LEGAL STANDARD **6**

ARGUMENT **7**

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS OF THEIR CONSTITUTIONAL CLAIMS. 7

A. Wyoming's Criminal TRAP Laws Violate Wyo. Const. Art. I, § 38 – Health Care. 12

B. Wyoming's Criminal TRAP Laws Violate Wyo. Const. Art. I, § 2, 3, 34; Art. III, § 27 – Equal Protection. 37

C. Certain Provisions of Wyoming's Criminal TRAP Laws Are Void for Vagueness. 45

II. WITHOUT A TRO, WYOMING'S CRIMINAL TRAP LAWS WILL CAUSE IRREPARABLE HARM TO PLAINTIFFS, THEIR PATIENTS, THEIR CLIENTS, AND OTHER WYOMINGITES. 48

A. Licensing Requirements Will Irreparably Harm Plaintiff Wellspring by Effectively Stopping Wellspring's Operations. 49

B. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from Prevention of Telehealth Care in Wyoming. 51

C. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from Forced Pregnancy and Parenting. 52

D. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from the Criminal TRAP Laws' Delayed Care, Increased Financial Burdens, and Cruel Treatment. 56

III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES SUPPORT ISSUANCE OF AN INJUNCTION. 58

IV. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER WITHOUT BOND. 59

CONCLUSION **59**

TABLE OF AUTHORITIES

Page(s)

Cases

Aid for Women v. Foulston,
441 F.3d 1101 (10th Cir. 2006) 48

Ailport v. Ailport,
2022 WY 43, 507 P.3d 427 (Wyo. 2022) 15, 36

Allhusen v. State By & Through Wyo. Mental Health Pros. Licensing Bd.,
898 P.2d 878 (Wyo. 1995)..38, 39, 43

Baessler v. Freier,
2011 WY 125, 258 P.3d 720 (Wyo. 2011) 42

Barrows v. Jackson,
346 U.S. 249 (1953)..48

Bd. of Cnty. Comm'rs v. Geringer,
941 P.2d 742 (Wyo. 1997)...42

Bellotti v. Baird,
443 U.S. 622 (1979)..49

Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne,
371 P.2d 409 (Wyo. 1962)...35

Carbaugh v. Nichols,
2014 WY 2, 315 P.3d 1175 (Wyo. 2014) 36

CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.,
2009 WY 113, 215 P.3d 1054 (Wyo. 2009) 6, 58

Chamber of Com. of U.S. v. Edmondson,
594 F.3d 742 (10th Cir. 2010) 58

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993)..40

Colorado Christian Univ. v. Weaver,
534 F.3d 1245 (10th Cir. 2008) 41

Does 1-11 v. Bd. of Regents of Univ. of Colorado,
100 F.4th 1251 (10th Cir. 2024) 41

Eisenstadt v. Baird,
405 U.S. 438 (1972)..48

Estrada v. State,
611 P.2d 850 (Wyo. 1980)...36

Fish v. Kobach,
840 F.3d 710 (10th Cir. 2016) 48

TABLE OF AUTHORITIES

Page(s)

Free the Nipple-Fort Collins v. City of Fort Collins,
916 F.3d 792 (10th Cir. 2019) 48

Galesburg Const. Co. v. Bd. of Trustees of Mem'l Hosp. of Converse Cnty.,
641 P.2d 745 (Wyo. 1982)...35

Giles v. State,
2004 WY 101, 96 P.3d 1027 (Wyo. 2004) 45, 47

Griego v. State,
761 P.2d 973 (Wyo. 1988)...45, 46

Griggs v. State,
2016 WY 16, 367 P.3d 1108 (Wyo. 2016) 35

Hardison v. State,
2022 WY 45, 507 P.3d 36 (Wyo. 2022) 15

Harris v. Bd. of Supervisors,
366 F.3d 754 (9th Cir. 2004) 58

Hoem v. State,
756 P.2d 780 (Wyo. 1988)...40, 42

Jane L. v. Bangerter,
102 F.3d 1112 (10th Cir. 1996) 36

Johnson et al. v. State of Wyoming et al.,
Civil Action No. 18732 (9th Jud. Dist. Ct., Teton Cnty. Wyo., July 28, 2022) 59

Johnson et al. v. State of Wyoming et al.,
Civil Action No. 18853 (9th Jud. Dist. Ct., Teton Cnty. Wyo., Apr. 17, 2023)......................59

Johnson et al. v. State of Wyoming et al.,
Civil Action No. 18853 (9th Jud. Dist. Ct., Teton Cnty. Wyo., Nov. 18, 2024) .... *passim*

Johnson v. State Hearing Examiner's Off.,
838 P.2d 158 (Wyo. 1992)...38

Johnson, et al. v. State of Wyoming, et al.,
Civil Action No. 0114940 (7th Jud. Dist. Ct., Natrona Cnty. Wyo., Feb. 28,
2025) 5

June Med. Servs. L. L. C. v. Russo,
591 U.S. 299 (2020), *abrogated on other grounds by Dobbs v. Jackson*
Women's Health Org., 597 U.S. 215 (2022)...48

Kikumura v. Hurley,
242 F.3d 950 (10th Cir. 2001) 48

Kirby Bldg. Sys. v. Mineral Explorations Co.,
704 P.2d 1266 (Wyo. 1985)..36

TABLE OF AUTHORITIES

Page(s)

Kolender v. Lawson,
461 U.S. 352 (1983) 45

Meerscheidt v. State,
931 P.2d 220 (Wyo. 1997) 36

Mills v. Reynolds,
837 P.2d 48 (Wyo. 1992) 42

N.M. Right to Choose/NARAL v. Johnson,
975 P.2d 841 (N.M. 1998) 17

Nation v. Giant Drug Co.,
396 P.2d 431 (Wyo. 1964) 40

In re Neely,
2017 WY 25, 390 P.3d 728 (Wyo. 2017) 40

Nehring v. Russell,
582 P.2d 67 (Wyo. 1978) 15, 38

Ochoa v. State,
848 P.2d 1359 (Wyo. 1993) 45

Operation Save Am. v. City of Jackson,
2012 WY 51, 275 P.3d 438 (Wyo. 2012) 59

Planned Parenthood of Kan. v. Andersen,
882 F.3d 1205 (10th Cir. 2018) 58

Planned Parenthood S.E., Inc. v. Strange,
33 F. Supp. 3d 1330 (M.D. Ala. 2014), *as corrected* (Oct. 24, 2014), *supplemented*, 33 F. Supp. 3d 1381 (M.D. Ala. 2014), *and amended*, 2014 WL 5426891 (M.D. Ala. Oct. 24, 2014) 31

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738 F.3d 786 (7th Cir. 2013) 26

Planned Parenthood of Wis., Inc. v. Van Hollen,
94 F. Supp. 3d 949 (W.D. Wis. 2015) 26, 31

Powder River Coal Co. v. Wyo. Dept. of Revenue,
2006 WY 137, 145 P.3d 442 (Wyo. 2006) 36, 46

Robinson v. Lynch,
2017 WL 1131896 (D. Utah Mar. 24, 2017) 35

Shaw v. Hunt,
517 U.S. 899 (1996) 37

State v. Langley,
84 P.2d 767 (Wyo. 1938) 16

TABLE OF AUTHORITIES

Page(s)

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549 P.2d 318 (Wyo. 1976) 35

United States v. Hardman,
297 F.3d 1116 (10th Cir. 2002) 37

United States v. Ochoa-Colchado,
521 F.3d 1292 (10th Cir. 2008) 35

United States v. Richter,
796 F.3d 1173 (10th Cir. 2015) 46

Vaughn v. State,
2017 WY 29, 391 P.3d 1086 (Wyo. 2017) 37

Washakie Cnty. Sch. Dist. No. One v. Herschler,
606 P.2d 310 (Wyo. 1980) 38, 42

Weiss v. State ex rel. Danigan,
434 P.2d 761 (Wyo. 1967) 58

Whole Woman's Health v. Hellerstedt,
579 U.S. 582 (2016) 25, 26, 34

Wyoming Gun Owners v. Gray,
83 F.4th 1224 (10th Cir. 2023) 35

Statutes

42 U.S.C. § 1395dd 26

Wyo. Stat. Ann. § 1-28-102 (2024) 6

Wyo. Stat. Ann. § 35-2-901 (amended) 4

Wyo. Stat. Ann. § 35-6-102 (2022) 2, 58

Wyo. Stat. Ann. § 35-6-123 (2023) 2

Wyo. Stat. Ann. § 35-6-131 ..... 17, 18

Wyo. Stat. Ann. § 35-6-132 ..... 17, 18

Wyo. Stat. Ann. § 35-6-201 *et seq.* (2024) 3

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TABLE OF AUTHORITIES

Page(s)

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House Bill 42 ....4, 5, 7

House Bill 64 .... *passim*

House Enrolled Act No. 26, H.R. 42, 68th Leg., Gen. Sess. (Wyo. 2025) 3

House Enrolled Act No. 35, H.R. 64, 68th Leg., Gen. Sess. (Wyo. 2025) 4

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Wyo. Legislature, *House Floor Session Day 12*, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz .... *passim*

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TABLE OF AUTHORITIES

Page(s)

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Rules

Wyo. R. Civ. P. 65 .... 6, 59

Regulations

Wyo. Admin. Code 048.0026.5 § 7 .... 27, 39

Wyo. Admin. Code 048.0026.5 § 9 23

Wyo. Admin. Code 048.0061.3 § 5 23

Constitutional Provisions

Wyo. Const. art. I, § 2 38

Wyo. Const. art. I, § 3 38

Wyo. Const. art. I, § 34 37

Wyo. Const. art. I, § 38 .... *passim*

Wyo. Const. art. III, § 27 42

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 Bills 42 and 64, 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 Bills 42 and 64 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 all 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 Bills 42 and 64 do nothing to protect women—instead they affirmatively harm women's health and infringe on their fundamental rights under the Wyoming Constitution.

The restrictions imposed by House Bills 42 and 64—including an ultrasound requirement to listen for a fetal "heartbeat" or view "fetal heart motion," a mandatory 48-hour waiting period, and 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 the laws protect women, they fail to offer any explanation or evidence to support this assertion, which is directly contradicted by the terms of the statutes, the undisputed evidence, and the legislative record.

Because House Bills 42 and 64 violate 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 laws are enforced, the Court should enter a temporary restraining order ("TRO") enjoining enforcement of House Bills 42 and 64, 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, this Court 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 and House Bill 64, which together include 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. 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

(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"); House Enrolled Act No. 35, H.R. 64, 68th Leg., Gen. Sess. (Wyo. 2025), Wyo. Stat. Ann. §§ 35-6-201 through 35-6-202 (2025) ("House Bill 64"). House Bills 42 and 64 are hereinafter Wyo. Stat. Ann. § 35-6-201 *et seq.* or the "Criminal TRAP Laws."

On February 27, 2025, the Governor signed House Bill 42 into law. On February 28, 2025, Plaintiffs filed this motion for a temporary restraining order against House Bill 42. On March 3, 2025, the Governor vetoed House Bill 64, admonishing the Legislature for "go[ing] too far" by "mandating [an] intimate, personally invasive, and often medically unnecessary procedure." Letter from Governor Mark Gordon Re: Veto of House Enrolled Act No. 35/House Bill 0064 – Chemical Abortions – Ultrasound Requirement (Mar. 3, 2025). The Governor "question[ed] whether [a transvaginal ultrasound] is absolutely necessary, fully informative, or can even be considered a reasonable requirement. . . . regardless of the circumstances resulting in the pregnancy," and noted particular concern for the lack of exceptions for vulnerable populations. *Id.* On March 5, 2025, the Wyoming State Legislature overrode the Governor's veto with a supermajority vote. Plaintiffs now amend this motion to also include a request for a temporary restraining order against House Bill 64.

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. House Bill 64 (the new ultrasound bill) includes the ultrasound requirements of House Bill 148 but replaces the word "child" with "baby" throughout and requires that the mother be afforded the opportunity to view "fetal heart motion." Wyo. Stat. Ann. § 35-6-201(b) (2025). The bill also removes language stating that an ultrasound is required to determine the location of the pregnancy and viability of the fetus. Instead, the ultrasound provider must provide a document with "[c]onfirmation of intrauterine pregnancy and the gestational age of the unborn baby." *Id.* § 35-6-201(d)(iv).

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.

Under House Bill 64, at least 48 hours before any person has a medication abortion, they must have an ultrasound "to provide the pregnant woman the opportunity to view the active ultrasound of the unborn baby and view the fetal heart motion or hear the heartbeat of the unborn baby if the heartbeat is audible." Wyo. Stat. Ann. § 35-6-201(b). The ultrasound provider must then provide the patient a document that includes the ultrasound provider's name, the name of the health care provider who "ordered or requested the ultrasound," and "[c]onfirmation of intrauterine pregnancy and the gestational age" of the fetus. *Id.* § 35-6-201(d). Further, before dispensing medication, a health care provider must "verify" these requirements "occurred," *id.* § 35-6-201(e), or risk six months in prison and/or a $9,000 fine. *Id.* § 35-6-201(f).

On February 28, 2025, Plaintiffs filed a lawsuit challenging House Bills 42 and 64, and a motion for TRO against House Bill 42 in the District Court for Natrona County. *Johnson, et al. v. State of Wyoming, et al.*, Civil Action No. 0114940 (7th Jud. Dist. Ct., Natrona Cnty. Wyo., Feb. 28, 2025) (the "Prior Action"). On March 5, 2025, Plaintiffs amended their motion for TRO in the Prior Action to include House Bill 64. Although Plaintiffs requested an emergency hearing on their motion for TRO, no such hearing was set. Because Plaintiffs and their patients are experiencing ongoing, severe, and irreparable injury—including direct harms to Plaintiffs and their

patients in Teton County—Plaintiffs had no choice but to dismiss the Prior Action without prejudice and re-file it in the form of the present lawsuit in the hope of securing a timely hearing on their motion for TRO.

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 Laws 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 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

[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 8**, Supplemental Declaration of Julie Burkhart. Plaintiffs also attach a declaration from the co-founder and lead pharmacist of Honeybee Health, Inc., which is incorporated herein by this reference. *See* **Exhibit 6**, Declaration of Jessica Nouhavandi, Pharm.D.

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 Laws run 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. All Plaintiffs challenge House Bill 64 both facially and as applied. 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.

The final complete text of House Bill 42 reads as follows:

AN ACT relating to public health and safety; requiring the licensure of surgical abortion facilities as specified; providing criminal penalties for violations; specifying civil liability for damages resulting from abortions; providing definitions; making conforming amendments; specifying applicability; requiring rulemaking; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-6-201 through 35-6-204 are created to read:

ARTICLE 2 REGULATION OF SURGICAL ABORTIONS

35-6-201. Definitions.

(a) As used in this article:

(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 are done with the 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) "Ectopic pregnancy" means the state of carrying an unborn child outside of the uterine cavity;

(iii) "Hospital" means those institutions licensed by the Wyoming department of health as hospitals;

(iv) "Intrauterine fetal demise" means the death of an unborn child inside the uterine cavity after twenty (20) weeks of pregnancy;

(v) "Miscarriage" means the spontaneous loss of the unborn child;

(vi) "Physician" means any person licensed to practice medicine in this state;

(vii) "Pregnancy" or "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 to full gestation and childbirth;

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

(ix) "Surgical abortion" means an induced abortion performed or attempted through use of a machine, medical device, surgical instrument or surgical tool, or any combination thereof, to terminate the clinically diagnosable pregnancy of a woman with knowledge and the intent that the termination by those means will cause, with reasonable likelihood, the death of the unborn child;

(x) "Surgical abortion facility" means any facility that provides a surgical abortion to a woman.

35-6-202. Surgical abortion facilities; licensure requirement; prohibitions; penalties.

(a) Each surgical abortion facility other than a hospital in Wyoming shall be licensed as an ambulatory surgical center in accordance with W.S. 35-2-901 through 35-2-914 and the rules of the department of health. Each surgical abortion facility performing surgical abortions shall have a separate license.

(b) No surgical abortion facility shall provide surgical abortions to any pregnant woman without first being licensed as an ambulatory surgical center.

(c) Each surgical abortion facility shall comply with all rules of the department of health concerning the operation and regulation of ambulatory surgical centers. No license issued to a surgical abortion facility shall be transferable or assignable to any other person or facility.

(d) Each licensed physician performing at least one (1) surgical abortion at a surgical abortion facility shall:

> (i) Report each surgical abortion to the department of health and attest in the report that the physician is licensed and in good standing with the state board of medicine;
>
> (ii) Submit documentation in a form and frequency required by the department of health that demonstrates that the licensed physician has 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.

(e) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000.00). Each calendar day in which a violation of this section occurs or continues is a separate offense.

35-6-203. Abortion facilities; surgical abortions; requirements; rulemaking.

(a) Any surgical abortion performed at a surgical abortion facility in the state shall only be performed by a physician licensed in the state of Wyoming.

(b) Any person who performs a surgical abortion in the state in violation of subsection (a) of this section is guilty of a felony punishable by imprisonment for not less than one (1) year nor more than fourteen (14) years.

(c) No person shall perform a surgical abortion at a surgical abortion facility in Wyoming who is not a licensed physician with admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the surgical abortion is performed.

(d) Any person who violates subsection (c) of this section shall be guilty of a misdemeanor punishable by a fine of one thousand dollars ($1,000.00). For purposes of this subsection, each surgical abortion shall constitute a separate offense of subsection (c) of this section.

(e) The department of health shall promulgate rules necessary to regulate surgical abortion facilities as ambulatory surgical centers under W.S. 35-2-901 through 35-2-914. Rules promulgated under this subsection shall:

(i) Not be less stringent than those rules applicable to ambulatory surgical centers;

(ii) Provide for the physical inspection of surgical abortion facilities by the department of health every three (3) years.

35-6-204. Applicability; effect.

If any provision of this article conflicts with the Life is a Human Right Act or W.S. 35-6-139, the provisions of the Life is a Human Right Act and W.S. 35-6-139 shall control over this article to the extent that the Life is a Human Right Act and W.S. 35-6-139 are in effect.

Section 2. W.S. 35-2-901(a)(ii) is amended to read:

35-2-901. Definitions; applicability of provisions.

(a) As used in this act:

(ii) "Ambulatory surgical center" means a facility which provides surgical treatment to patients not requiring hospitalization and is not part of a hospital or offices of private physicians, dentists or podiatrists. "Ambulatory surgical center" shall include any surgical abortion facility as defined by W.S. 35-6-201(a)(x);

Section 3.

(a) Nothing in this act shall be construed as creating an individual right to abortion.

(b) It is the intent of the legislature that this act shall not:

(i) Be construed as holding abortion as lawful in the state;

(ii) Recognize or define abortion as a health care decision under article 1, section 38 of the Wyoming Constitution.

Section 4. The department of health shall promulgate all rules necessary to implement this act.

Section 5. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

* * * * *

The final complete text of House Bill 64 reads as follows:

AN ACT relating to abortions; requiring ultrasounds before the procurement of chemical abortions; providing verification requirements; providing definitions; providing penalties;

specifying applicability; providing for the conflict of laws; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-6-201 and 35-6-202 are created to read:

ARTICLE 2 REGULATION OF ABORTIONS

35-6-201. Chemical abortions; ultrasound requirement; definitions; penalties.

(a) As used in this article:

(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 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 are done with the 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) "Chemical abortion" means the use of any medication, drug, substance or combination thereof that is prescribed or administered for the purpose of terminating a pregnancy once the pregnancy can be confirmed through conventional medical testing;

(iii) "Health care provider" means a person licensed, certified or authorized in a health care profession under title 33 of the Wyoming statutes;

(iv) "Pregnancy" or "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 baby or human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth.

(b) Not less than forty-eight (48) hours before a pregnant woman procures the drugs or substances for a chemical abortion or before a health care provider dispenses the drugs or substances necessary for a chemical abortion, whichever is earlier, the pregnant woman

shall receive an ultrasound in order to provide the pregnant woman the opportunity to view the active ultrasound of the unborn baby and view the fetal heart motion or hear the heartbeat of the unborn baby if the heartbeat is audible.

(c) The ultrasound required under subsection (b) of this section shall be of a quality consistent with standard medical practice in the community.

(d) Upon providing an ultrasound under this section, the provider of the ultrasound shall provide the pregnant woman with a document that specifies:

> (i) The date, time and place of the ultrasound;
>
> (ii) The health care provider who ordered or requested the ultrasound;
>
> (iii) The health care provider who performed the ultrasound;
>
> (iv) Confirmation of intrauterine pregnancy and the gestational age of the unborn baby.

(e) Before a health care provider dispenses the drugs or substances necessary for a chemical abortion to a pregnant woman, the health care provider shall verify that the ultrasound required by this section occurred.

(f) Except as otherwise provided in this subsection, any person who violates this section shall be 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. Nothing in this section shall be construed to subject a pregnant woman to any criminal penalty under this subsection.

35-6-202. Ultrasound requirement; conflict of laws; applicability.

If any provision of this article conflicts with the Life is a Human Right Act or W.S. 35-6-139, the provisions of the Life is a Human Right Act and W.S. 35-6-139 shall control over this article to the extent that the Life is a Human Right Act and W.S. 35-6-139 are enforceable.

Section 2. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

* * * * *

A. Wyoming's Criminal TRAP Laws Violate 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***.

(emphases 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 Laws undermine, rather than further, the asserted purpose of protecting women's health, and unreasonably interfere with necessary and appropriate medical care for Wyoming women. As such, the statutes are not "reasonable and necessary" to protect public health and welfare ***and*** contravene the legislature's duty to avoid undue infringement of this right. The Criminal TRAP Laws therefore violate 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, this Court held in *Johnson II* 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)).

This 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, this 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 Laws that the statutes regulate health care. House Bill 42 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. House Bill 64 concerns the use of prescription medication and references "medical treatment[s]." Wyo. Stat. Ann. § 35-6-201. It is beyond credible dispute that the Criminal TRAP Laws regulate health care.

2. The Criminal TRAP Laws Violate 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 Laws' 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 Laws cannot survive any level of scrutiny: the statutes would fail even the rational-basis test because they are "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 Laws Are Not "Reasonable And Necessary" to Protect the Health and Safety of Women.

The Criminal TRAP Laws are not "reasonable and necessary" to protect "health and general welfare," Wyo. Const. art. I, § 38(c), nor do they achieve the statutes' 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).

Similarly, when introducing House Bill 64 in the same committee, the bill's sponsor, House Speaker Chip Neiman, explained the bill was needed "from the standpoint of ***health*** reasons." Wyo. Legislature, *House Labor, Health & Social Servs. Comm.*, YOUTUBE (Jan. 22, 2025), https://www.youtube.com/watch?v=oICFxdsEF-8 at 00:21:17–21:40 (emphasis added); *see also id.* at 00:26:21–26:35 (noting verification requirements are "for the safety of the mother"); Wyo. Legislature, *House Floor Session Day 11*, YOUTUBE (Jan. 28, 2025), https://www.youtube.com/live/brcID4m6pPQ at 02:33:32–33:42 ("[We are] going to do this in an effort to try to be able to provide [the mother] some safety and protection.").

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 Laws do 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. In fact, abortion medications are widely regarded as safer than medicines such as Tylenol and Viagra. Ex. 3, Amaon ¶ 20 n.8. 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; Ex. 6, Nouhavandi ¶¶ 7–8.

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, this Court previously 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 ultrasound and 48-hour waiting period requirements in House Bill 64 serve no medical purpose. House Bill 64 does not protect the health and safety of women. *First*, there is no conceivable medical purpose for the 48-hour waiting period. Ex. 2, Hinkle ¶ 23; Ex. 5, Burkhart ¶¶ 41–42. This waiting period is dangerous for patients who are experiencing complications that are not excepted by the statute, and forcing women experiencing pregnancy complications to wait 48 hours after an ultrasound before proceeding with an abortion increases the risk of complications by delaying necessary care. Ex. 3, Amaon ¶¶ 23, 26.

Second, the requirement that a woman be afforded an opportunity to view the ultrasound and "view the fetal heart motion or hear the heartbeat," Wyo. Stat. Ann. § 35-6-201(b), similarly serves no medical purpose. Ex. 1, Anthony ¶ 37; Ex. 2, Hinkle ¶ 24. Moreover, in the first trimester, there is no fetal heart motion or heartbeat because the heart organ has not been formed yet. Ex. 1, Anthony ¶ 37; Ex. 2, Hinkle ¶ 24; *see also* Ex. 3, Amaon ¶ 19. Instead, the audio, and corresponding visual information, picked up during an ultrasound is not an indicator of a fetal heartbeat but is actually the electrical activity of proto-cardiac muscular tissue in the fetus, which

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[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.

eventually develops into a heart. Ex. 1, Anthony ¶ 37; Ex. 2, Hinkle ¶ 24. In addition to being medically unnecessary, it is inhumane and traumatic to subject a patient to listen to the electrical activity of a soon-to-be-terminated pregnancy. Ex. 1, Anthony ¶ 37; Ex. 2, Hinkle ¶ 24.

Third, there is no medical evidence suggesting that an ultrasound is universally necessary prior to any kind of abortion. Ex. 1, Anthony ¶¶ 27–29; Ex. 2, Hinkle ¶¶ 14–17; Ex. 3, Amaon ¶¶ 15, 20; Ex. 4; Lichtenfels ¶ 15. A systematic review of over 2,000 studies that presented clinical outcomes of medication abortion concluded that "[m]edication abortion performed without prior pelvic examination or ultrasonogram is a safe and effective option for pregnancy termination." *See* Ex. 1, Anthony ¶ 27, n.3. Such "no-test" abortions are widely accepted in the medical industry as safe. Ex. 3, Amaon ¶ 20. Relatedly, an ultrasound is generally not necessary to determine the gestational age of a pregnancy. *Id.* ¶ 12. Gestational age is typically determined based on the woman's last menstrual period and only in rare cases where a patient uses certain types of birth control is an ultrasound useful in making this determination. *Id.* ¶¶ 12, 15. Furthermore, some patients seek an abortion before their pregnancies even can be detected on an ultrasound. Under House Bill 64's ultrasound requirement, these patients would have to postpone their abortion care until after the pregnancy can be visualized. *Id.* ¶¶ 15 n.3, 21. Accordingly, pharmacists or other providers of abortion medications do not need to review "a document that specifies . . . [c]onfirmation of intrauterine pregnancy and the gestational age" of the fetus, Wyo. Stat. Ann. § 35-6-201(d), for any medical reason. Ex. 3, Amaon ¶ 12; *see also* Ex. 1, Anthony ¶ 33; Ex. 2, Hinkle ¶ 21.

Moreover, when medically indicated, the first ultrasound usually occurs around eight to nine weeks because the sonogram may have difficulty displaying the pregnancy at an earlier gestation. Ex. 3, Amaon ¶ 16. Because of the lack of utility of ultrasounds before eight to nine weeks, some providers may not want to order them before then. *See id.* Even those who do order

them in an attempt to comply with House Bill 64 would still find it difficult to provide "[c]onfirmation of intrauterine pregnancy and the gestational age" as required under the law. *Id.* A gestational sac containing a yolk sac within intrauterine fluid—which would be indisputable evidence of a pregnancy—may not be visualized on an ultrasound until around six weeks of pregnancy. *Id.* Accordingly, it is much harder for an ultrasound taken in the first few weeks of pregnancy to "confirm[ ] an intrauterine pregnancy" and measure the "gestational age." *Id.*

The suggestion by legislators that an ultrasound is necessary to protect women from pregnancy complications, such as ectopic pregnancies, is belied by the fact that the ultrasound requirement applies only to pregnant women *seeking abortions*, not to all pregnant women, and by the fact that legislators removed the requirement to determine the "location" of a pregnancy (as required in the 2024 version of House Bill 64). Wyo. Legislature, *House Labor, Health & Social Servs. Comm.*, YOUTUBE (Jan. 22, 2025), https://www.youtube.com/watch?v=oICFxdsEF-8 at 00:21:51–22:38 (describing the necessity of an ultrasound to determine "whether or not this is an ectopic pregnancy"); *compare* H.B. 148, 67th Leg., Budget Sess. (Wyo. 2024) ("[T]he physician or pharmacist shall ensure that the pregnant woman receives an ultrasound in order to . . . determine the location of the pregnancy.") *with* Wyo. Stat. Ann. § 35-6-201(d) (failing to include requirements to determine fetus location).

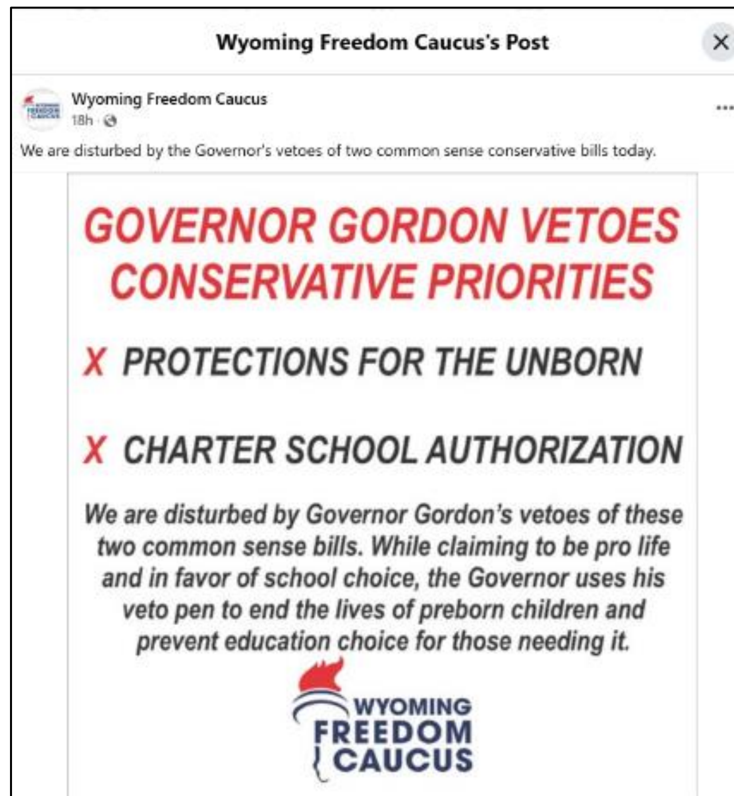
Forcing a patient to delay taking abortion medication by scheduling and attending an ultrasound appointment could delay the detection of some pregnancy complications, such as ectopic pregnancy, thereby increasing the risk to women's health. Ex. 3, Amaon ¶ 23. Abortion medication acts directly on the uterus and its contents, which means that the medication does not impact an ectopic pregnancy—a pregnancy that is located outside of the main cavity of the uterus. *Id.* ¶¶ 21, 23. If a woman with an undiagnosed ectopic pregnancy takes abortion medication, her treating physician will suspect a potential ectopic pregnancy when her uterus does not empty, and

the physician can immediately proceed with treatment to avoid major internal bleeding and a potential ruptured fallopian tube. *Id.* ¶ 23. In such cases, requiring women to proceed with scheduling and attending ultrasound appointments after her initial appointment with the physician, rather than taking the prescription for abortion medication, would only delay discovery of the ectopic pregnancy, thereby increasing risk to the woman's health and safety. *Id.*

In short, there are no medical reasons to mandate an ultrasound to view "fetal heart motion" or listen to the fetal "heartbeat," and certainly no medical reasons to make women wait 48 hours to receive treatment. In a moment of candor, the sponsor of House Bill 64 admitted that the asserted goal of protecting women's health was a pretext for the real motivation: preventing abortions. During debate on the bill, its sponsor, House Speaker Chip Nieman, was "completely transparent" and acknowledged the actual purpose for the waiting period was to discourage abortion, not to protect women's health and safety. Wyo. Legislature, *House Floor Session Day 11*, YOUTUBE (Jan. 28, 2025), https://www.youtube.com/live/brcID4m6pPQ at 02:33:32–33:51 ("[Q]uite frankly let's be completely transparent, I do want that little tiny person to have the opportunity to be seen once before its life is ended and maybe, maybe it may get another chance of life."); *see id.* at 02:45:22–02:45:31 ("Insofar as why wait the 48 hours, yeah, bang, **you got me.** I want the mother to be able to have time to think about this." (emphasis added)); Wyo. Legislature, *House Floor Session Day 12*, YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 01:26:38–26:45 ("I definitely want to try everything that I possibly can to provide the opportunity for life to exist and have that chance.").

Indeed, the true intent of House Bill 64 was made plain again when the Freedom Caucus—a group of Wyoming House Representatives of which House Speaker Nieman is a member—rebuked the Governor on social media for vetoing House Bill 64 and thereby vetoing "protections for the unborn" and "end[ing] the lives of preborn children." Wyoming Freedom Caucus,

Governor Gordon Vetoes Conservative Priorities, FACEBOOK (Mar. 3, 2025, 11:00 pm EST), https://www.facebook.com/share/p/168eRRamot/?mibextid=wwXIfr.



By characterizing House Bill 64 as protecting the "unborn"—a purpose that was not mentioned during debate and that is not directly furthered by the statute (which on its face does not purport to ban any abortions)—the legislators have admitted that House Bill 64 is not intended to protect women and that its real, undisclosed purpose is to stop all abortions.

The Criminal TRAP Laws' 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 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

[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.

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 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 Laws' 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.

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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.

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 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 Laws are reasonable and necessary to protect women's health, they violate Section 38(c). In addition, the laws do not in any way further their claimed purpose and therefore cannot satisfy either strict scrutiny or rational basis review.

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

The Criminal TRAP Laws also violate Section 38(d) because they unduly infringe on women's right to make their own health care decisions. The Criminal TRAP Laws will make abortions difficult or impossible to obtain in Wyoming by severely undermining telehealth and medication abortion care and 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.

The ultrasound requirement constitutes undue government infringement by mandating an invasive and traumatic procedure. House Bill 64 will unduly harm women by effectively requiring transvaginal ultrasounds. A transvaginal ultrasound is the only type of ultrasounds that

can be used early in a pregnancy and it is extremely invasive. Ex. 1, Anthony ¶ 28; Ex. 2, Hinkle ¶ 16; Ex. 4, Lichtenfels ¶ 17. It requires inserting a probe into the vagina and against the cervix. Ex. 1, Anthony ¶ 28; Ex. 2, Hinkle ¶ 16; Ex. 4, Lichtenfels ¶ 17. In vetoing House Bill 64, the Governor acknowledged that a transvaginal ultrasound is "an unnecessary, intimate, and invasive procedure . . . which subjects women to an uncomfortable and potentially traumatic experience in what may already be a very overwhelming situation." Letter from Governor Mark Gordon Re: Veto of House Enrolled Act No. 35/House Bill 0064 – Chemical Abortions – Ultrasound Requirement (Mar. 3, 2025). That the legislature would require such a medically unnecessary, invasive procedure amounts to a legislative assault and battery on Wyoming women.

Moreover, as the Governor noted when vetoing the bill, mandating this procedure on "specific populations who may be more vulnerable to psychological effects related to the procedure"—such as survivors of childhood sexual abuse and victims whose pregnancy is caused by rape or incest—without any exceptions, is "concern[ing]." *Id.* Forcibly subjecting victims of sexual assault to a transvaginal ultrasound risks re-traumatizing victims for no medical reason. Ex. 1, Anthony ¶ 28; Ex. 2, Hinkle ¶¶ 16–18; Ex. 3, Amaon ¶ 15. A woman who needs to terminate a pregnancy due to lethal fetal anomalies will likewise be forced to endure the trauma of being forced to view "fetal heart motion" or listen to a "heartbeat" before proceeding with terminating the pregnancy. Ex. 2, Hinkle ¶ 24. "Intimate obstetric and gynecological examinations" should not be forced on "a woman and her family who is forced to choose her health over that of the unborn." Letter from Governor Mark Gordon Re: Veto of House Enrolled Act No. 35/House Bill 0064 – Chemical Abortions – Ultrasound Requirement (Mar. 3, 2025).

The ultrasound requirements constitute undue infringement because they create significant additional barriers to abortion care. It may also be challenging for many Wyoming women to schedule appointments for transvaginal ultrasounds. As a result of Wyoming's medical

deserts, transvaginal ultrasound services, which require different equipment, are not as readily available as transabdominal ultrasounds in Wyoming. Ex. 5, Burkhart ¶ 40; Ex. 4, Lichtenfels ¶ 17. Crisis Pregnancy Centers ("CPCs")—which some legislators have suggested could provide the ultrasounds required under House Bill 64—will not fill the gap. CPCs are not licensed medical providers and are not required to be staffed by medical professionals who are trained to determine the legally mandated information. Ex. 1, Anthony ¶ 33; Ex. 2, Hinkle ¶ 21; Ex. 3, Amaon ¶ 17; Wyo. Legislature, *House Floor Session Day 12,* YOUTUBE (Jan. 29, 2025), https://www.youtube.com/live/GAx_aFsOsdA?si=9Mw9FWkS2JS271Oz at 01:15:39–01:32:36. As a result, it is unlikely that most CPCs will be qualified to provide the required ultrasounds since the law defines "health care provider" as a person "licensed, certified or authorized in a health care profession under title 33 of the Wyoming statutes." Wyo. Stat. Ann. § 35-6-201(a)(iii).

Furthermore, the ultrasound documentation provided by CPCs rarely, if ever, includes the biometric parameters required by House Bill 64, Ex. 3, Amaon ¶¶ 17–18, and thus cannot provide the information required for a patient to receive a prescription for abortion medication by their healthcare provider or a pharmacy. Ex. 1, Anthony ¶ 33; Ex. 2, Hinkle ¶ 21; Ex. 3, Amaon ¶ 17. Any relevant parameters that are measured by the sonogram would be noted in the patient's medical records and not necessarily provided to the patient. Ex. 3, Amaon ¶ 18. Indeed, the patient would need to provide authorization to the ultrasound provider to release this information to her physician before the patient is able to receive a prescription for the medication. *Id.* And to the extent a patient seeks an ultrasound from a CPC, the corresponding documentation typically would not contain the information required by the law. *Id.* ¶ 17. Therefore, in the very real possibility that an ultrasound provider lacks familiarity with the nuances of law and/or a patient is not comfortable disclosing to the ultrasound provider the reasons for seeking an ultrasound, *id.* ¶ 18, the documentation would be deficient under House Bill 64 and force the patient to receive yet

another ultrasound from a different provider. This process would compound the patient's delay in receiving care and increase unnecessary risks to her safety. *Id.*

Second, even if a patient can schedule an ultrasound appointment, she may be unable to afford the costs associated with the appointment. Ex. 3, Amaon ¶ 13. Most of the ultrasounds required by House Bill 64 will not be medically indicated and therefore will not be covered by insurance (if patients even have insurance), thereby requiring women to pay out of pocket. Ex. 1, Anthony ¶ 32; Ex. 2, Hinkle ¶ 20; Ex. 4, Lichtenfels ¶ 20; Ex. 5, Burkhart ¶ 39. These ultrasounds can cost hundreds of dollars at rural health clinics or even thousands of dollars at county hospitals. Ex. 3, Amaon ¶ 13. Even ultrasounds that are medically indicated—and therefore more likely to be covered by insurance—are expensive and can cost thousands of dollars. *See* Ex. 3 Amaon ¶ 13; Ex. 4, Lichtenfels ¶ 20. And for those that are covered by insurance, women can still face significant co-pays and other out-of-pocket costs. Ex. 3, Amaon ¶ 13.

Third, the increased travel, appointments, and time required to schedule and plan these appointments, all imposed by House Bill 64, are serious impediments to women seeking abortion care. Ex. 4, Lichtenfels ¶¶ 11, 16. Courts have repeatedly recognized that "requiring travel to access abortion services has two main effects: (1) delaying abortion; and (2) for some women, not getting abortions they wanted." *Van Hollen*, 94 F. Supp. 3d at 992; *Planned Parenthood S.E., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1356 (M.D. Ala. 2014) ("[W]omen forgo abortions at higher rates when they must travel farther to reach an abortion provider."), *as corrected* (Oct. 24, 2014), *supplemented*, 33 F. Supp. 3d 1381 (M.D. Ala. 2014), *and amended*, 2014 WL 5426891 at *2 (M.D. Ala. Oct. 24, 2014) ("confirming the relationship between distance from a clinic and the likelihood that a woman will obtain an abortion"). The requirement that an ultrasound must be performed at least 48 hours before an abortion will require women to take multiple additional steps—(1) schedule and attend an appointment with a physician who will "order or request the

ultrasound," (2) schedule and attend an ultrasound appointment; and (3) schedule and attend an appointment with the physician or visit a pharmacy two days later to collect the abortion medication. Wyo. Stat. Ann. §§ 35-6-201(b)–(e); *see* Ex. 4, Lichtenfels ¶¶ 15–18; Ex. 5, Burkhart ¶¶ 41–42. And this all assumes the physician is satisfied that the patient has reached the requisite stage of pregnancy to render a workable ultrasound, and the ultrasound provider is equipped to provide the necessary information. *See* Ex. 3, Amaon ¶¶ 17–18. These requirements will necessitate missing additional work, arranging childcare, and arranging transportation. Ex. 7, Johnson ¶ 15 (explaining if "forced to travel to another state," she must decide between her "busy job and two young children to care for" or "risk carrying the pregnancy to term with life-threatening consequences"); Ex. 1, Anthony ¶ 34; Ex. 4, Lichtenfels ¶ 15. Women who are unable to make these arrangements will not be able to obtain an abortion.

And many women who live in small towns or rural communities have privacy concerns about obtaining an ultrasound in local clinics or hospitals prior to receiving an abortion. Ex. 3, Amaon ¶ 13. Wyoming already suffers from medical care deserts—there are only a limited number of hospitals across nearly 100,000 square miles—so it can be difficult to access care, particularly gynecological care, in many parts of the state. Ex. 1, Anthony ¶ 61; Ex. 2, Hinkle ¶ 22; Ex. 4, Lichtenfels ¶ 13; Ex. 5, Burkhart ¶ 40; *see also HLS Healthcare Facility Directory*, WYO. DEP'T OF HEALTH, at 5–6, 14–15 (Feb. 10, 2025), *available at*: https://health.wyo.gov/wp-content/uploads/2025/01/2024-2025-Facility-Directory.pdf (last accessed Feb. 20, 2025).

The 48-hour waiting requirement constitutes undue infringement on a woman's right to seek necessary medical care. The 48-hour waiting period will result in delayed delivery of critical health care to women, increasing the risk of harm. While House Bill 64 exempts "ectopic" pregnancies from the 48-hour waiting period requirement, the bill provides no such exemptions for the myriad of other pregnancy complications for which termination is standard medical

treatment. Drs. Anthony and Hinkle have provided several such examples of complications for which essential medical treatment would be delayed, causing increased risk to the woman's health. Ex. 2, Hinkle ¶¶ 33–36; Ex. 1, Anthony ¶ 43. For example, House Bill 64 does not exempt molar pregnancies from the ultrasound and 48-hour waiting period requirements. Ex. 2, Hinkle ¶ 33; Ex. 1, Anthony ¶ 43. This will not only result in delay for treatment of this life-threatening condition but will require the woman to view an ultrasound of her tumor. Ex. 2, Hinkle ¶ 33; Ex. 1, Anthony ¶ 43. Under House Bill 64's framework, she may not be able to get access to abortion medication to address this life-threatening condition. Ex. 2, Hinkle ¶¶ 31, 36; Ex. 1, Anthony ¶¶ 34, 43. Similarly, the Criminal TRAP Laws provide no exceptions to save the life of the mother. This means that a woman who is hemorrhaging and in critical condition, but whose fetus is not deceased, will be required to undergo an invasive ultrasound procedure and wait 48 hours before she receives critical medical care. Ex. 2, Hinkle ¶¶ 30, 34; Ex. 1, Anthony ¶ 43; Ex. 7, Johnson ¶ 19. Furthermore, as pointed out by the Governor in vetoing House Bill 64, victims of sexual assault will also be forced to endure the 48-hour waiting period, without exception, "put[ting] a woman at risk of delaying care and compromising the window for a procedure that is being pursued only because of an unwanted, unlawful, and traumatic experience." Letter from Governor Mark Gordon Re: Veto of House Enrolled Act No. 35/House Bill 0064 - Chemical Abortions-Ultrasound Requirement (Mar. 3, 2025).

Ambulatory surgical center requirements will unduly infringe upon the right of health care access. 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 Laws undermine, rather than further, the State's asserted purposes and unduly interfere 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 Laws.

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

Although the language of the Criminal TRAP Laws, on their face, violates Section 38, the Court may also engage in evidentiary review to find that the Criminal TRAP Laws violate 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 it did in *Johnson II*. *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 Laws 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 Laws are vague and unclear in their definition of abortion); Ex. 1, Anthony ¶ 24 (describing how the Criminal TRAP Laws fail to understand the "complexity of [ ] medical decision-making" and create "gray areas" for providers).

Moreover, because Section 38 creates express, fundamental rights, the Criminal TRAP Laws 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 Laws violate Section 38, this evidence is not necessary to find such a violation, because the terms of the statutes themselves establish that they do 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 Laws Violate Wyo. Const. Art. I, § 2, 3, 34; Art. III, § 27 – Equal Protection.

The Criminal TRAP Laws violate 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 Laws affect 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 Laws run 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 have "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 Laws provide no justification, nor can the State point to any evidence, medical or otherwise, 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 Laws 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 Laws 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 Laws regulate 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.

Both Criminal TRAP Laws contain 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 Laws generally define 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 statutes except 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 that 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.

House Bill 64's ultrasound provision is vague on its face because it reaches "a substantial amount of constitutionally protected conduct" and specifies "no standard of conduct at all." *Giles*, 2004 WY ¶15, 96 P.3d at 1031–32. House Bill 64 mandates that a health care provider "verify" that House Bill 64—which is replete with terms lacking any medical or common-sense meaning—has been satisfied. The statute provides no clarity on how a health care provider must "verify" that a patient received an ultrasound to "provide[ ] an opportunity to view the active ultrasound . . . and view the fetal heart motion or hear the heartbeat" of the fetus and that the ultrasound was "of a quality consistent with standard medical practice in the community." Wyo. Stat. Ann. § 35-6-201(b), (c); *see* Ex. 2, Hinkle ¶ 21; Ex. 3, Amaon ¶ 29; Ex. 6, Nouhavandi ¶¶ 9–10. All the statute requires in terms of documentation from the person performing the ultrasound is to certify the date, time, place it occurred, provide "[c]onfirmation of intrauterine pregnancy and the gestational age" of the fetus, and name the medical providers involved—not that the ultrasound was performed in a way that satisfied all the statutory requirements. Wyo. Stat. Ann. § 35-6-201(d). It is entirely unclear how a health care provider, who might be a different person from the technician or provider performing the ultrasound, can ascertain whether the ultrasound met the statutory requirements. Ex. 6, Nouhavandi ¶¶ 9–10 ("[B]oard certification for pharmacists [do not] require[ ] any training in reviewing or interpreting an ultrasound."). Additionally, the definition of "chemical abortion" fails to provide guidance for health care providers. The definition covers the termination of pregnancy by abortion medications but lacks any exceptions for other uses of abortion medication, making it "impossible for health care professionals to understand when they can legally administer treatments to patients under this definition and when they cannot." Ex. 2, Hinkle ¶ 30; *id.* at Ex. 1, Anthony ¶ 40. By the same token, it is unclear whether the definition would cover ***both*** doses

of the different medications used to terminate a pregnancy. *See id.* As a whole, the statute specifies "no standard of conduct" under *Giles* that will provide guidance as to how a provider is supposed to comply with it. The ultrasound provision of House Bill 64 leaves health care providers in a precarious position, left simply to guess at its meaning, at the risk of criminal liability, fines, and potentially the loss of their licenses. *See* Wyo. Stat. Ann. § 35-6-201(f).

The Criminal TRAP Laws therefore are unconstitutionally vague, both on their face and as applied.

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

If allowed to take effect, Wyoming's Criminal TRAP Laws 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 Laws will have a catastrophic impact on Plaintiffs and many other Wyomingites. The laws 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. Plaintiff Just The Pill will be unable to operate in the State of Wyoming, restricting Dr. Amaon's ability to practice within the state and harming Just The Pill's Wyoming patients, who can no longer access care. Ex. 3, Amaon ¶ 31.

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, Just The Pill, 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 Prevention of Telehealth Care in Wyoming.

The onerous requirements imposed by the Criminal TRAP Laws will make telehealth abortion care impossible for Wyoming women. House Bill 64 outright replaces telehealth care with multiple, unnecessary in-person appointments, including one for an ultrasound and one to collect medication for a physician or pharmacist after a mandated waiting period. Wyo. Stat. Ann. § 35-6-202(a)(b); *see supra* Section I.A.2.i. Physicians will need to require women to make and attend an appointment for an ultrasound and then attempt to review that ultrasound. Ex. 3, Amaon ¶ 25; Ex. 4, Lichtenfels ¶ 19. This makes virtual healthcare impossible for Wyoming women seeking a medication abortion.

Furthermore, pharmacists and other dispensers of abortion medications may become unwilling to provide Wyoming health care providers and patients with either mifepristone or misoprostol—the standard medication combination used to terminate a pregnancy—even for

procedures that are lawfully excepted from House Bill 64's restrictions, Ex. 6, Nouhavandi ¶ 12, irreparably infringing on Plaintiffs' abilities to provide and receive health care. House Bill 64, as discussed *supra* Section I.C., requires providers, including pharmacists, dispensing the medications for abortions to "verify" that a patient has complied with the statute, an impossible ask given the vagueness and unworkability of House Bill 64 and the fact that pharmacists are untrained in reviewing or interpreting an ultrasound. Ex. 6, Nouhavandi ¶¶ 9–10; *see* Ex. 1, Anthony ¶ 63; Ex. 3, Amaon ¶ 29. To avoid the risk of penal punishment as outlined in House Bill 64, it is likely that pharmacists will refuse to dispense abortion medications, Ex. 1, Anthony ¶ 38; Ex. 2, Hinkle ¶ 68; Ex. 6, Nouhavandi ¶ 12, thus effectively leading to the prevention of all medication abortions within the state. Moreover, the inability to fill a prescription for abortion medication will also harm patients suffering from other conditions and symptoms that would be alleviated by the same medication and prevent the administration of the medications in other routine gynecological procedures such as childbirth. Ex. 2, Hinkle ¶ 28; Ex. 6, Nouhavandi ¶ 12.

The closure of Wellspring's facilities will also impact the ability of telehealth providers to provide comprehensive care (which includes referring patients in need of procedural abortions to an in-state facility and ensuring they can be treated effectively consistent with medical standards). *See, e.g.*, Ex. 3, Amaon ¶ 34.

Accordingly, the Criminal TRAP Laws will irreparably harm Plaintiffs and Wyomingites by curbing access to abortion care via telehealth and medication abortion in Wyoming.

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

The consequences of Wyoming's Criminal TRAP Laws extend beyond the deprivation of access to time-sensitive medical care. If the Criminal TRAP Laws go 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 Laws 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 either medication abortion or 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 ¶¶ 5, 8, 32. Given the de facto ban on abortion by the Criminal TRAP Laws, 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 Laws 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 Laws' 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 Laws require pregnant individuals to face and endure these risks—an irreparable injury that only an injunction can prevent.

D. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from the Criminal TRAP Laws' 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 Laws' delay of care. The ultrasound requirement and 48-hour waiting period requirement in House Bill 64 necessarily mean that even those women who can access abortion in Wyoming will receive that care later in their pregnancies.

Enforcement of the ultrasound provision will cost Wyoming women substantial amounts of time and money and will, for many, be a complete barrier to obtaining care. Ex. 4, Lichtenfels ¶ 18. Ultrasounds are often difficult to access and expensive. Ex. 2, Hinkle ¶ 20; Ex. 4, Lichtenfels ¶ 18; Ex. 3, Amaon ¶ 13; Ex. 5, Burkhart ¶ 40. There are medical deserts in Wyoming, which will impose significant hardships in terms of accessing transvaginal ultrasounds, which will be required for women in the first trimester of their pregnancies under the statute. Ex. 2, Hinkle ¶ 22; Ex. 3, Amaon ¶ 15; Ex. 4, Lichtenfels ¶ 16. Further, sonograms in the early weeks of pregnancy may not visualize a pregnancy and certain ultrasound documents provided to patients may be defective in this time frame, creating further delay for patients, who may very well have to wait weeks to reach a point where providers could comply with the law without facing criminal sanction. Ex. 3, Amaon ¶ 16. Health insurance will not cover the cost of ultrasounds if not medically necessary, Ex. 2, Hinkle ¶ 20; Ex. 5, Burkhart ¶ 39, and as discussed, the ultrasound provisions are medically unnecessary in most cases. Additionally, the 48-hour waiting period under House Bill 64 will make abortion impossible for women who cannot travel and wait in a different city for several days for a prescription or health care because they have jobs or families that rely on them. Ex. 4, Lichtenfels ¶ 19. Some Wyomingites may also be forced to compromise the confidentiality of their decision to have an abortion to obtain transportation or childcare. Ex. 1, Anthony ¶ 61; Ex.

3, Amaon ¶ 13; Ex. 4, Lichtenfels ¶ 18. Others, for their own safety, will not be able to travel and wait in another city because they cannot tell their families why they are traveling to seek care or are unable to escape a situation with intimate partner violence to travel. Ex. 4, Lichtenfels ¶ 19; *see also* Ex. 3, Amaon ¶ 13.

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.

Due to the liabilities House Bill 64 imposes on pharmacists and physicians for conduct that they are unable to monitor and control (i.e., whether a patient seeking a medication abortion received an ultrasound in the manner outlined by the statute), pharmacists likely will stop providing abortion medications to patients and medical care providers in Wyoming, creating an effective ban on medication abortions across the state and disrupting routine health care that relies on the administration of these medications for purposes other than abortion. Ex. 6, Nouhavandi ¶ 12. This will irreparably harm Plaintiffs Anthony, Hinkle, Wellspring, and Just The Pill that use these medications in the care of patients, Ex. 1, Anthony ¶¶ 3, 6, 38; Ex. 2, Hinkle ¶ 8; Ex. 3, Amaon ¶¶ 7–8, 29; Ex. 5, Burkhart ¶ 40, Plaintiff Johnson, who may need to access this medication for her own care, Ex. 7, Johnson ¶ 21, and Plaintiff Chelsea's Fund who 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 Laws are 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, this 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 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 Laws violate 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 laws are enforced, the Court should enter a TRO enjoining enforcement of the statutes, 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 Laws pending trial in this matter.

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RESPECTFULLY SUBMITTED this 11th day of March 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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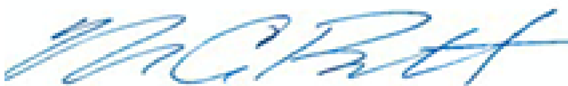

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