IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF NATRONA

DANIELLE JOHNSON; GIOVANNINA ANTHONY, M.D.; RENE R. 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,	)	
vs.	)	
	)	**Civil Action No. 2025-CV-0115019**
STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; JOHN HARLIN, Sheriff Natrona County, Wyoming; and SHANE CHANEY, Chief of Police, City of Casper, Wyoming,	)	
Defendants.	)	

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER HAVING come before the Court on the Plaintiffs' *Motion for Temporary Restraining Order Against Wyoming Criminal Trap Laws* filed on March 24, 2025. The matter was heard on April 8, 2025 with Marci C. Bramlet, John H. Robinson, Bethany J. Saul, and Peter S. Modlin, appearing on behalf of the Plaintiffs.[1] Mr. Modlin argued the matter for all Plaintiffs. For the Defendnants Jared Holbrook appeared for the Sherriff, Eric Nelson For

[1] At the time of the hearing, the Defendants had received notice of the matter and had responded. At an April 1, 2025, scheduling conference, the parties agreed that the matter should be heard as a hearing on preliminary injunction. Thus, the subject of the hearing was the preliminary injunction. W.R.C.P. 65(a)—(b).

the Chief of Police, John J. Woykovsky, and Donovon Burton for the State Defendants, with Mr. Woykovsky arguing the Motion. Having heard and considered the Motion, the law and the arguments of the parties and otherwise being fully advised in the premises, the court **FINDS AND ORDERS AS FOLLOWS:**

INTRODUCTION AND RELEVANT BACKGROUND

This case represents the most recent in a series of challenges to laws regulating abortion in Wyoming. The history of abortion legislation in Wyoming is recent but dynamic, and while the propriety of *all* abortion legislation is not currently before this Court both parties here reference the history and it provides an informative backdrop.

Abortion regulation largely reached its peak in 2022, post *Dobbs v. Jackson's Women's Health Organization*, 597 U.S. 215 (2022). The Wyoming Legislature first adopted House Bill ("HB") 92, which prohibited *most* abortions absent certain, limited exceptions.[2] The Honorable Judge Melissa M. Owes, Ninth Judicial District, Teton County, preliminarily enjoined HB 92. Then, in 2023, the Legislature passed and adopted HB 152, another general abortion ban containing certain exclusions. That same session, the Legislature also passed and adopted Senate File 109, prohibiting medicinal abortions. Ultimately, Judge Owens issued a Summary Judgment Order permanently enjoining HB 152 and Senate File 109 from taking effect.[3] Next, in the 2024 legislative session, the Wyoming Legislature adopted HB 148. HB 137 was also introduced that same session but failed. Many of its provisions were subsequently incorporated into HB 148. Governor Mark Gordon vetoed HB 148.

Most recently, and at the heart of this case, is the Legislature's adoption of HB 42 and 64, currently codified at Wyo. Stat. Ann. §§ 35-6-201 *et. seq.*[4] While Governor Gordon signed HB

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2 Wyoming had what is commonly called a "trigger bill" which went into effect upon the United States Supreme Court's decision in *Dobbs*.

3 That Order is currently on appeal with the Wyoming Supreme Court. Upon the parties' stipulation, this Court took judicial notice of that Order. For purposes of this order, this Court refers to it as "*Johnson v. State*, SJ Order."

4 The parties both make repeated references to the laws by their bill names; however, as they are now law, the Court may refer to them by the applicable statute number. For shorthand, as to HB 42, the Court refers to it as "ASC requirement." As to HB 64, the Court refers to it as "ultrasound requirement."

42 into law, he vetoed HB 64. The Legislature overrode that veto and now it is before this Court on a constitutional challenge.

HB 42, now codified at Wyo. Stat. Ann. §§ 35-6-201 *et. seq.*, mandates that facilities providing abortion services license themselves as ambulatory surgical centers ("ASCs"). ASC compliance demands meeting a variety of arguably burdensome medical and constructional conditions and obtaining separate licensure. Notably, the law also orders that surgical abortion centers have admitting privileges at a hospital within ten (10) miles of its location. Wyo. Stat. Ann. § 35-6-202(d)(ii)(West 2025).

HB 64, now Wyo. Stat. Ann. § 35-6-201(b)—(f), provides in full:[5]

> (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.

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[5] Available at https://wyoleg.gov/2025/EnrollHB0064.pdf

On March 24, 2025, Plaintiffs filed their *Motion for Temporary Restraining Order Against Wyoming Criminal Trap Law*. The State Defendants filed their *State's Response to Plaintiffs' Motion for Temporary Restraining Order* on April 3, 2025. [6] This Court conducted hearing on the matter on April 8, 2025.

PLAINTIFFS' STANDING

The State Defendants argue that the Plaintiffs do not have standing to sue. Standing is a threshold matter which must be considered first. The Plaintiffs here include the sole healthcare clinic providing abortion services within the State; a woman of childbearing age who was pregnant and allegedly intends to become pregnant again in the near future; two (2) licensed physicians; and two (2) nonprofit organizations, providing various abortion education, resources, and care.

Standing jurisprudence in Wyoming is controlled by the holdings from *Brimmer v. Thompson*, 521 P.2d 574 (Wyo. 1974), and includes a four-part test.

> First, a justiciable controversy requires parties having existing and genuine, as distinguished from theoretical, rights or interests. Second, the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships of one or more of the real parties in interest, or, wanting these qualities be of such great and overriding public moment as to constitute the legal equivalent of all of them. Finally, the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues. Any controversy lacking these elements becomes an exercise in academics and is not properly before the courts for solution.

Id. at 579 (quoting *Sorenson v. City of Bellingham*, 80 Wash.2d 547, 496 P.2d 512, 517 (1992)). While federal precedent does not control Wyoming trial court decisions, it is nonetheless persuasive. *Allred v. Bebout*, 2018 WY 8, ¶ 35, 409 P.2d 360, 269 (Wyo. 2018).

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6 At the April 1, 2025, scheduling conference, counsel for Natrona County and counsel for Defendant, Shane Chaney, indicated that they would not argue or brief the issue, but in all respects stood on the State's argument.

In this instance, the State Defendants only dispute the first prong of *Brimmer*—the genuine and existing rights. As to the physicians, clinic, and nonprofit organizations, the State Defendants assert that the rights set forth for standing are not the same as those constitutionally protected under Wyo. Const. art. 1, § 38. This claim misses the mark. Consider the following ruling from *June Medical Services, LLC v. Russo*, 591 U.S. 299, 319—20, (2020) *abrogated on other grounds by Dobbs v. Jackson's Women's Health Org.*, 597 U.S. 215 (2022):

> The plaintiffs are abortion providers challenging a law that regulates their conduct. The threatened imposition of governmental sanctions for noncompliance eliminates any risk that their claims are abstract or hypothetical. That threat also assures us that the plaintiffs have every incentive to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function. And, as the parties who must actually go through the process of applying for and maintaining admitting privileges, they are far better positioned than their patients to address the burdens of compliance. They are, in other words, "the least awkward" and most "obvious" claimants here.

(Internal citations and some internal quotation marks omitted). This Court finds no reason to depart from that rationale and applies it equally to the named physicians, nonprofits, and clinic.

Furthermore, the argument that an individual woman, who is not currently pregnant, holds only a theoretical right, is not only unworkable but defies logic. Applying that level of rigidity to the legal doctrine of standing, especially in light of the temporary nature of pregnancy, would almost certainly ensure no woman ever achieved it. *See Brimmer*, 521 P.2d at 578 (holding that one has a genuine existing right to run for public office ***when they hold the qualifications to do so***). Standing, particularly in declaratory judgment actions, is meant to allow interested persons a place in litigation. It should not be formidable nor must all factors perfectly align to award a litigant their day in court. *See Cox v. City of Cheyenne*, 2003 WY 146, ¶ 12, 79 P.3d 500, 506 (Wyo. 2003). Under the lens of *Brimmer* and all other applicable law, this Court finds that the Plaintiffs in this matter have standing for this challenge.

INJUNCTIVE LEGAL FRAMEWORK

Wyo. Stat. Ann. §§ 1-28-101 *et. seq.* and W.R.C.P. 65 govern preliminary injunctions, such as this. "The purpose of a preliminary injunction is to preserve the status quo until the merits of an action can be determined." *Brown v. Best Home Health & Hospice, LLC*, 2021 WY 83, ¶ 7, 491 P.3d 1021, 1026 (Wyo. 2021). It is an extraordinary remedy but appropriate upon the clear demonstration of probable success on the merits and the possibility of irreparable harm in its absence. *Id.* Here the facts the Court considers, while certain to be developed more fully as the litigation progresses, are those present in the file through April 5, 2025.

ANALYSIS, FINDINGS, AND CONCLUSIONS

In their request for a preliminary injunction, Plaintiffs allege three (3) specific constitutional protections: (1) the right to control their own healthcare decisions; (2) the constitutional right to equal protection; and (3) the constitutional prohibition on vagueness in criminal statutes. The Court finds that the first claim is dispositive, *as to the preliminary injunction*, and reserves consideration of the others until trial on the merits. As such the Court does need not rule on Plaintiffs' equal protection or void for vagueness arguments at this time. *See, e.g., Mills v. Reynolds*, 837 P.2d 48, 52 (Wyo. 1992).

Wyo. Const. Art. 1, § 38

Wyoming is noteworthy in that a provision of its Constitution directly addresses the breadth of an individual's right to make certain health care decisions. In full, the "Right to Healthcare Access" provision reads as follows:

> (a) Each competent adult shall have the right to make his or her own health care decisions. The parent, guardian or legal representative of any other natural person shall have the right to make health care decisions for that person.
>
> (b) Any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so.
>
> (c) The legislature may determine reasonable and necessary restrictions on the rights granted under this section to protect the health and general welfare of the people or to accomplish the other purposes set forth in the Wyoming Constitution.

> (d) The state of Wyoming shall act to preserve these rights from undue governmental infringement.

Wyo. Const. art. 1, § 38.

Varying levels of scrutiny accompany these constitutional challenges. Here, the Plaintiffs assert that strict scrutiny is the proper review. This Court agrees.

> If a fundamental right is implicated or if the classification is inherently suspect, we employ a strict scrutiny standard. Under the strict scrutiny test, the classification must be closely scrutinized to determine if it is necessary to achieve a compelling state interest. In addition, the burden is on the State to demonstrate that it could not use a less onerous alternative to achieve its objective.

Martin v. Board of County Commissioners of Laramie County, 2022 WY 21, ¶ 14, 503 P.3d 68, 73 (Wyo. 2022)(quoting *Mills*, 839 P.2d at 53).

As Judge Owens found, the ability to make healthcare decisions is a fundamental right, as it was directly written into the State Constitution. *Johnson v. State*, SJ Order, ¶ 37; Wyo. Const. art. 1, § 38(a). If it is a right guaranteed by the Constitution, it is fundamental. *Mills*, 839 P.2d at 53—54. The State Defendants seemingly contend that, because the Constitution also accounts for "reasonable and necessary restrictions," the right is not fundamental, and the Court must employ a rational basis standard. While this constitutional provision is undoubtedly unique, the State Defendant's proposition ignores applicable precedent and other provisions of the Constitution. *See* Wyo. Const. art. 1, § 38(d); *Geringer v. Bebout*, 10 P.3d 514, 520—31 ("every statement in the constitution must be interpreted in light of the entire document **** [and it should not be interpreted] to render any portion meaningless"). Certainly, the Court considers the provision in its totality, but cannot ignore its place in the Constitution and recognition as an inherent *right*. The State Defendants provide no contrary authority suggesting otherwise or reconciling this express proclamation. Therefore, the court employs a strict scrutiny review. The salient question thus becomes whether the laws at issue are "reasonable and necessary" restrictions protecting

general health and welfare and whether they promote a compelling government interest. *See* Wyo. Const. art. 1, § 38; *Martin*, 2022 WY at ¶14.[7]

Broadly, the State Defendants assert that the ASC and ultrasound requirements serve to protect the health and general welfare of women seeking abortions. As to the ASC requirements, the State Defendants are critical of the Plaintiffs' assertions that surgical abortions are inherently safe but offer no contrary evidence. While apparently acknowledging surgical abortion's lack of *intentional* incisions, the State Defendants suggest that *unintentional* incisions justify State action. What is missing from their argument is how ASC requirements alleviate or address these concerns, empirical evidence supporting such a claim, or why such concerns could not be addressed through more measured, narrowly tailored legislation. Moreover, the State Defendants provide no explanation, reason, or evidence as to why admitting privileges are reasonable or necessary. Quite simply, the State Defendants fail to link ASC requirements to women's safety and general welfare. In fact, the evidence presented by the Plaintiffs stands largely uncontroverted.

As to the ultrasound requirement, the State Defendants broadly assert that such law reasonably and necessarily ensures that pregnant women can make competent decisions—a faction of informed consent. This argument appears to circumvent the constitutionally contemplated precepts of "necessary and reasonable." That a transvaginal ultrasound is necessary to obtain informed consent offends common sense. Plaintiffs' Exhibit 2, ¶ 22; Plaintiffs' Exhibit 3, ¶ 15; Plaintiffs' Exhibit 4, ¶ 16. The State Defendants assert that such practice could potentially identify ectopic pregnancies earlier; thus, generally promoting women's health. However, the fact that *only* women seeking abortions would benefit, corrodes that argument. The same can be said for the mandatory forty-eight (48) waiting period provision. A period of

7 The Plaintiffs seemingly anticipated that the State Defendants would fight back on whether abortion equates to health care. The issue of whether abortion is healthcare was not argued, perhaps due to pending Supreme Court review of Judge Owens' order. . For purposes of this order, abortion is healthcare.

reflection, as characterized by the State Defendants, serves no legitimate purpose and no evidence further supporting this argument is before the Court.

The current ASC and Ultrasound requirements affect a fundamental right expressly provided for by the Wyoming Constitution. At least at this juncture, the State Defendants failed demonstrating that the laws are necessary, reasonable, or advance a compelling government interest. In fact, the uncontested evidence indicates otherwise. For this reason, this Court finds that there is a likelihood of success on the merits.

IRREPARABLE HARM

For this court to issue injunctive relief, Plaintiffs must also demonstrate the potential for irreparable harm and no adequate remedy under the law. *See, e.g., CBM Geosolutions, Inc. v. Gas Sensing Technology Corp.*, 215 P.3d 1054, 1058 (Wyo. 2009). Here, the irreparability of the harm is evident. Not only is it widely accepted amongst many jurisdictions that constitutional violations create a *per se* irreparable injury, *See, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189—90 (10th Cir. 2003), but so does the potential for criminal prosecution. *See Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2009). Both of those possibilities are present here. The Court finds that the harm is irreparable in nature and cannot be adequately compensated by any available legal remedy.

BOND

Under the Wyoming Rules of Civil Procedure, Rule 65(c), bond is required in "in an amount that the court considers proper to pay the costs and damages sustained" by the affected party. Here, however, the State Defendants do not address bond or object to the Plaintiffs' request that no bond is required. Finding there is no likelihood of harm no bond is necessary and none will be required.

IT IS THEREFORE ORDERED that the *Plaintiffs' Motion for Temporary Restraining Order Against Wyoming Trap Laws* is **GRANTED** and a **PRELIMINARY INJUNCTION IS ORDERED**. This Court temporarily **ENJOINS AND RESTRAINS** Defendants, their officer, employees, agents, servants, attorneys, appointees, successors, or any person who are active in concert or participation with the Defendants from enforcing the abortion restrictions adopted by HB 42 amending and codified at Wyo. Stat. Ann. §§ 35-6-201—204, 35-6-209(a) and HB 64 at Wyo. Stat. Ann. § 35-6-201(b).

IT IS FURTHER ORDERED that this Order shall be entered without the Plaintiffs providing security pursuant to W.R.C.P. 65(c).

IT IS FURTHER ORDERED that Defendants shall provide a copy of this Order to all county prosecutors and municipal prosecutors.

Dated this 21 day of April 2025.

THOMAS T.C. CAMPBELL
DISTRICT JUDGE RETIRED

cc: John H. Robinson
Marci Crank Bramlett
Bethany Saul
Peter Modlin
Eric Nelson
Jared Holbrook

John J. Woykovsky
Donovon Burton

I hereby certify that I distributed a true and correct copy of the foregoing this _____ day of April, 2025, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]

_____
Deputy Clerk