

FILED

**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; 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;
STATE OF WYOMING BOARD OF MEDICINE;
KEVIN BOHNENBLUST,
Executive Director of the Wyoming Board of Medicine;
STATE OF WYOMING BOARD OF NURSING;
RACHAEL FILLBRANDT,
Executive Director of the Wyoming Board of Nursing;
STATE OF WYOMING BOARD OF PHARMACY;
and MATT MARTINEAU,
Executive Director of the Wyoming Board of Pharmacy**

Defendants.

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER is before the Court on the Plaintiffs’ *Motion for Temporary Restraining Order Against Section 402(b)(iii) of House Bill 164* (“*Instant Motion*”), filed June 4, 2025. Arguments were heard on June 23, 2025, with Marci C. Bramlet, John H. Robinson, Peter S. Modlin and Bethany J. Saul, who presented argument on behalf of the Plaintiffs; Heather Duncan-Malone, Eric Nelson, John J. Woykovsky, who presented argument on behalf of the Defendants. Having reviewed the file, the pleadings and arguments, and otherwise being advised in the matter, the court **FINDS AND ORDERS AS FOLLOWS:**

INTRODUCTION AND RELEVANT BACKGROUND

This case serves as the latest, in a series of challenges, to laws regulating abortion in the state of Wyoming. This Court entered a preliminary injunction in this matter on April 21, 2025, concerning Wyoming criminal “TRAP” laws. Accordingly, the parties are well acquainted with the status of these proceedings and the Court will not outline the entire procedural posture or the broader legislative context surrounding abortion in Wyoming. Instead, the Court recounts only those facts relevant and necessary to resolve the *Instant Motion*.

On May 1, 2025, the Plaintiffs filed their *First Amended Complaint for Declaratory Judgment and Injunctive Relief*, adding a provision of House Bill 164 (“HB 164”) to its requests for relief, removing Plaintiff, Just the Pill, from the case, and adding various Defendants. Thereafter, on June 4, 2025, the Plaintiffs filed the *Instant Motion*, seeking preliminary injunction relating to W.S. § 33-1-402(b)(iii), which has an effective date of July 1, 2025.¹

Broadly stated, the Wyoming Off-Label Protection Laws permit physicians and pharmacists in the state to prescribe off-label indications, free from interference or possible

¹ The parties use the terms “HB 164” and the corresponding statutory citations interchangeably. For clarity, the Court will refer to the legislation in its entirety as the “Wyoming Off-Label Protection Laws.” When addressing a specific provision, the Court will identify it by its statutory designation.

discipline by their respective licensing boards. However, the language expressly excludes certain categories from this protection, specifically medications “[i]ntended to induce an abortion.” W.S. § 33-1-402(b)(iii). The Plaintiffs argue that inclusion of this exception offends the State Constitution on multiple grounds. The State Defendants filed their *State Defendants’ Response to Plaintiffs’ Motion for a Temporary Restraining Order* (“*Response*”) on June 20, 2025. The *Response* largely rejects Plaintiffs’ interpretation of Wyoming Off-Label Protection Laws.

INJUNCTIVE LEGAL FRAMEWORK

W.S. §§ 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.*; *see also* W.S. § 1-28-102.

ANALYSIS, FINDINGS, AND CONCLUSIONS

In their request for a preliminary injunction, Plaintiffs allege that W.S. § 33-1-402(b)(iii) violates citizens’ rights to control their own healthcare decisions and the constitutional right to equal protection. The Plaintiffs challenge the laws both facially and as applied. Finding the first argument dispositive, the Court does not consider Plaintiffs’ equal protection argument in this instance. *See, e.g., Mills v. Reynolds*, 837 P.2d 48, 52 (Wyo. 1992).

Likelihood of Success on the Merits

As a threshold observation, the State Defendants urge this Court to abide by the canons of “Constitutional Avoidance”. In support of this assertion, the State Defendants primarily direct this court to the holdings of *Bain v. City of Cheyenne*, 2025 WY 67, --- P.3d --- (Wyo. 2025). In *Bain*,

the Appellant sued the City of Cheyenne (“the City”) under the Wyoming Governmental Claims Act (“WGCA”). *Id.* at ¶ 3. The City invoked the WGCA’s \$250,000 cap on liability. *Id.* The Appellant moved for partial summary judgment, arguing that the cap violated Article 10, § 4(a) of the Wyoming Constitution, which prohibits statutes “limiting the amount of damages to be recovered for causing the injury or death of any person.” *Id.* at ¶ 4. Ultimately, the Wyoming Supreme Court ruled that the cap is not a limitation on damages under Article 10, § 4(a) but rather defines the extent of the State’s waiver of immunity, which is tolerable under the State Constitution. *Id.* at ¶¶ 11—18.

Though the *Bain* decision underscored the importance of constitutional presumption, nowhere did it employ the term “Constitutional Avoidance,” nor did it alter the litany of precedence governing judicial review of a statute’s constitutionality. *See generally id.* In fact, the decision resulted from fundamental and familiar principles of law, such as statutory interpretation and adherence to prior precedent. *Id.* at ¶¶ 11—18, 21.

Thus, the Court begins by citing the laws at issue:

33-1-401. Definitions.

(a) As used in this article:

(i) "Disciplinary action" means any action taken by a health related licensing board against a licensee, including but not limited to revocation, limitation, suspension or denial of a license or any other disciplinary action taken by a health related licensing board against a licensee;

(ii) "Off-label indication" means drug treatments for conditions other than those stated in the labeling approved by the United States food and drug administration;

(iii) "Pharmacist" means any person licensed by the board of pharmacy under title 33, chapter 24 of the Wyoming statutes to practice pharmacy;

(iv) "Prescriber" means a physician or a physician assistant licensed under title 33, chapter 26 of the Wyoming statutes, a dentist licensed under title 33, chapter 15 of the Wyoming statutes, an optometrist licensed under title 33, chapter 23 of the

Wyoming statutes or an advanced practice registered nurse licensed under title 33, chapter 21 of the Wyoming statutes.

33-1-402. Prescribing drugs for off-label indication; exception.

(a) Notwithstanding any other law, a prescriber may lawfully prescribe a United States food and drug administration approved prescription drug for off-label indication, and a pharmacist is authorized to dispense a prescribed drug for off-label indication within their scope of practice pursuant to a valid prescription order.

(b) This section shall not apply to prescriptions for substances that are:

(i) Listed as schedule I or schedule II controlled substances under federal law or the Wyoming Controlled Substances Act of 1971;

(ii) Intended to transition a minor's biological sex as determined by the sex organs, chromosomes and endogenous profiles of the minor or affirm the minor's perception of the minor's sex if that perception is inconsistent with the minor's biological sex;

(iii) Intended to induce an abortion.

33-1-403. Professional conduct.

(a) Notwithstanding any other law, a prescriber or pharmacist shall not face any adverse action from a health related licensing board, including disciplinary action, solely on the basis that a prescriber prescribed a United States food and drug administration approved prescription drug for off-label indication, or a pharmacist dispensed a prescription drug prescribed for off-label indication pursuant to a valid prescription order pursuant to this article.

(b) Notwithstanding any other law, any recommendation, prescription, use or opinion of a prescriber or pharmacist related to medical treatment that is not regulated by a health related licensing board, the department of health, a professional association or the United States food and drug administration, shall not be considered unprofessional conduct.

Section 2. The Wyoming state board of medicine, the board of dental examiners, the Wyoming state board of examiners in optometry, the board of nursing and the state board of pharmacy shall adopt all rules necessary to implement this act.

Section 3. This act is effective July 1, 2025.

Further following the approach of the *Bain* analysis, this Court must engage in statutory interpretation to determine the effect and meaning of the statute. *Bain*, 2025 WY at ¶¶ 11—12.

When we interpret statutes, our goal is to give effect to the intent of the legislature. We first “attempt to determine the legislature's intent based primarily on the plain and ordinary meaning of the words used in the statute. Where legislative intent is discernible, a court should give effect to the ‘most likely, most reasonable, interpretation of the statute, given its design and purpose. This Court considers “all statutes relating to the same subject or having some general purpose in *pari materia*. In doing so, we construe the statutes of the [WGCA] together ... giv[ing] effect to every word, clause, and sentence.

When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Id. at ¶¶ 12—13.

At the outset, the Court finds that the language is clear and unambiguous and thus relies on its plain and ordinary meaning. The State Defendants frame much of their argument around use of the term “notwithstanding” in W.S. § 33-1-402(a), asserting that it was included for the purposes of recognizing the potential legality of W.S. §§ 35-6-123 and 35-6-139.² This is a distinction without difference. If the Wyoming Supreme Court were to reverse the enjoinder of W.S. §§ 35-6-123 and 35-6-139 and determine that these laws are constitutional, this matter is without merit. The State Defendants further assert that the Wyoming Off-Label Protection Laws do not effectively ban abortion, rather stop short of condoning it.

To argue that the statute *does not* prohibit the off-label prescription of abortion-inducing drugs but merely permits off-label use for other indications, is a strained and untenable reading. If the statute excludes abortion-related prescriptions from the safe harbor it creates, then it

² The constitutionality of W.S. §§ 35-6-123 and 35-6-139 is currently before the Wyoming Supreme Court on appellate review. In sum, these statutory provisions prohibit and criminalize abortions, including medication abortions. Previously, the District Court for the 9th Judicial District of Wyoming permanently enjoined these laws.

necessarily treats those prescriptions as *not lawful* under this provision. Suggesting that this exclusion simply “does not make it illegal” but instead merely withholds new authorization is semantic hair-splitting; in practical terms, the statute draws a bright line between permissible off-label uses and those it aims to restrict, abortion among them. For these reasons, the court cannot accept the State Defendants’ claim that the Wyoming Off-Label Protection Laws do not attempt to limit access to abortion medication when that is precisely what it does.

For purposes of this motion, the State Defendants do not combat the Plaintiffs’ arguments that medication abortions, including those utilizing off-label medications, are safe, common, and effective; and they do not challenge that access to abortion equates to healthcare under the umbrella of the Wyoming Constitution. For the sake of efficiency, in respect of its prior rulings, and without further opposing argument, the Court accepts that abortion access is healthcare under Article 1, § 38 of the Wyoming Constitution; thus, it is a fundamental right. “In [cases where a fundamental right is invoked], the strong presumptions in favor of constitutionality are inverted, the burden then is on the governmental entity to justify the validity of the statute, and [the] Court has a duty to declare legislative enactments invalid if they transgress a constitutional provision.” *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022)(internal citations and quotation marks omitted).

When implicating a fundamental right, such as healthcare, a strict scrutiny standard applies—meaning, the government must show that the law is necessary to achieve a compelling government interest. *Id.* at ¶ 6. The State Defendants do not identify a government interest, rather they rest on the argument discussed above. In addition, this court cannot independently discern a compelling interest. Thus, because provisions of the Wyoming Off-Label Protection Laws interfere with one’s fundamental right to make healthcare decisions, and the laws achieve no

apparent compelling government interest, *at this stage in the proceedings*, the court finds that there is a likelihood of success that Plaintiffs prevail on their challenge to the constitutionality of the statute, both facially and as applied.

IRREPARABLE HARM

The Plaintiffs’ evidence as to redressability of the harm is plentiful and stands mostly uncontroverted. “[H]arm is irreparable when there is no adequate remedy at law to compensate for it.” *Best Home Health & Hospice*, 2021 WY at ¶ 8. (citing *Dunmire v. Powell Fam. of Yakima, LLC (In re Kite Ranch, LLC)*, 2008 WY 39, ¶ 22, 181 P.3d 920, 926 (Wyo. 2008)).

Interference with access to healthcare services equates to irreparable harm. As the Plaintiffs’ evidence demonstrates, the consequences of delayed or denied care are often immediate, non-monetary, and, in many cases, life-altering. When individuals are deprived of timely medical treatment, particularly for reproductive care, the resulting harm cannot be undone by retrospective legal remedies. This rationale was recognized by the 10th Circuit and its reasons are sound. *Planned Parenthood of Kansas v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018). Furthermore, the harm is relatively certain, as even the State Defendants’ own evidence supports the frequency in which off-label medications are used for medication abortions. Such a market limitation has a certain and undeniable impact.

Finally, the Court has repeatedly found that such laws implicate constitutional rights and “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” *See, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189—90 (10th Cir. 2003). Thus, absent any competing evidence from the State Defendants, the Court finds that the harm is irreparable in nature and cannot be adequately compensated for 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. The State Defendants do not address bond, nor do they object to the Plaintiffs’ request that no bond be required. Finally, the court finds there is no likelihood of harm, “If the district court finds no likelihood of harm to the defendant, no bond is necessary.” *Operation Save Am v. City of Jackson*, 2021 WY 51, ¶ 98, 275 P.3d 438, 466 (Wyo. 2021). Accordingly, no bond is required.

IT IS THEREFORE ORDERED that the *Instant Motion* 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 164, section 402(b)(iii), W.S. § 33-1-402(b)(iii).

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

Dated this 30th day of June 2025.



THOMAS T.C. CAMPBELL
DISTRICT JUDGE