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

DANIELLE JOHNSON; GIOVANNINA ANTHONY, M.D.; RENE HINKLE, M.D.; CHELSEA'S FUND; CIRCLE OF HOPE HEALTH CARE SERVICES, INC., d/b/a Wellspring Health Access, Plaintiffs, v. STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; JOHN HARLIN, Sheriff Natrona County, Wyoming; and SHANE CHANEY, Chief of Police, City of Casper, Wyoming; 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.	2025-CV-0115019 Ret. Judge Thomas T. C. Campbell

MEMORANDUM IN SUPPORT OF
MOTION FOR A PRELIMINARY INJUNCTION AGAINST
SECTION 402(b)(iii) OF HOUSE BILL 164

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COME NOW Plaintiffs, by and through undersigned counsel, and pursuant to Wyo. Stat. Ann. § 1-28-101 *et seq.* and Rule 65, Wyo. Rules of Civil Procedure, file this Memorandum in support of their *Motion for a Preliminary Injunction*, and in support thereof hereby state as follows:

INTRODUCTION AND DISPOSITION REQUESTED

For years, the State of Wyoming has made it increasingly difficult, if not impossible, to access medication abortion care. The medication abortion ban ("Medication Abortion Ban") enacted in 2023 has 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. Since then, restrictions on access to abortion medication enacted by the Legislature in 2025 have been subject to a preliminary injunction ordered by this Court on April 21, 2025. A subsection of House Bill 164 ("Section 402(b)(iii)") contains yet another attempt by the Legislature to limit access to abortion medication and should be similarly subject to a preliminary injunction, because it violates the fundamental constitutional right of women to make their own health care decisions, infringes on physicians' constitutional right to equal protection, and is not narrowly tailored to any governmental interest, compelling or otherwise.

As of July 1, 2025, House Bill 164 authorizes Wyoming physicians and pharmacists to prescribe and dispense prescription drugs approved by the U.S. Food and Drug Administration ("FDA") for off-label indications without risk of adverse action from Wyoming's health related licensing boards, but specifically excepts three categories from this protection, including prescriptions of drugs "[i]ntended to induce an abortion." Wyo. Stat. Ann. § 33-1-402(b)(iii) (2025). In other words, the statute expressly does not authorize—and does not protect physicians for—the prescription or dispensing of FDA-approved drugs for abortion care if such care is not indicated on their labels, even if such use is otherwise an accepted, evidence-based medical use.

For example, the FDA-approved label for mifepristone includes an indication for use of misoprostol and mifepristone together for abortions up until ten weeks of gestation. But these

medications are routinely used for some abortions after ten weeks, or used with modified dosages, which are not authorized under the statute. Moreover, because misoprostol's label does not include an indication for abortion, the statute does not authorize use of misoprostol alone to induce abortions, a medically accepted practice. And although misoprostol is regularly used to soften and dilate the cervix during procedural abortions and for miscarriage management, these uses are "off-label," so it is unclear if they are authorized under the statute.

As this Court has already found, restrictions such as these, often referred to as targeted regulations on abortion providers ("TRAP") laws, have no "link . . . to women's safety and general welfare." *Johnson et al. v. State et al.*, Civil Action No. 0115019 (7th Jud. Dist. Ct., Natrona Cnty. Wyo., Apr. 21, 2025) (Order Granting Motion for Preliminary Injunction) at 8 ("PI Order"). Although legislators claim that House Bill 164 is intended to protect physicians who prescribe medications for off-label indications—a decades-long practice—they fail to offer any explanation or evidence as to why this protection should be denied only for some abortion-related uses. In fact, the bill sponsor himself explained that the abortion exception to House Bill 164 serves no medical purpose but instead is simply further codification of the Medication Abortion Ban—a law that has already been permanently enjoined.

Because Section 402(b)(iii), like the Criminal TRAP Laws (as defined *infra*), violates Wyoming women's constitutional rights to make health care decisions and physicians' rights to equal protection, and because Plaintiffs will suffer irreparable injury if House Bill 164 goes into effect on July 1, 2025, the Court should enter a preliminary injunction enjoining enforcement of

the abortion exception to House Bill 164, Wyo. Stat. Ann. § 33-1-402 (b)(iii), both facially and as applied to Plaintiffs.[1]

This Court previously found that Plaintiffs were substantially likely to succeed on the merits of their claim that TRAP laws such as this one irreparably harm Plaintiffs and their patients, in part due to the impact that restrictions on medication abortion care have on "a fundamental right expressly provided for by the Wyoming Constitution." PI Order at 9. As set forth herein, Plaintiffs are similarly likely to succeed on the merits of their claim that Section 402(b)(iii) is unconstitutional because, like the Criminal TRAP Laws, it restricts, impedes, and denies Wyoming women access to safe, effective reproductive health care and is not narrowly tailored to any governmental interest, compelling or otherwise.

PROCEDURAL BACKGROUND

The Wyoming State Legislature adopted House Bill 92 (the "Trigger Ban") in 2022, 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,"

[1] In support of the present motion, Plaintiffs hereto attach declarations which are incorporated herein by this reference. *See* **Exhibit 1**, Supplemental Declaration of Rene R. Hinkle, M.D.; **Exhibit 2**, 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 3**, Supplemental Declaration of Jessica Nouhavandi, Pharm.D. Additionally, Plaintiffs attach declarations that were previously filed in this case on March 24, 2025, in connection with Plaintiffs' Motion for a Temporary Restraining Order against House Bills 42 and 64. While these declarations pertain to House Bills 42 and 64, certain testimony is relevant to House Bill 164 and the instant motion. The following as-filed versions of these declarations are incorporated herein by this reference: **Exhibit 4**, Declaration of Rene R. Hinkle, M.D.; **Exhibit 5**, Declaration of Julie Burkhart; **Exhibit 6**, Declaration of Jessica Nouhavandi, Pharm.D.; **Exhibit 7**, Declaration of Giovannina Anthony, M.D.; **Exhibit 8**, Declaration of Julie Amaon, M.D.; **Exhibit 9**, Declaration of Christine Lichtenfels; **Exhibit 10**, Declaration of Danielle Johnson. With respect to **Exhibit 7**, Plaintiffs also append the referenced sources as attachments.

and together with the Criminal Abortion Ban, the "Abortion Bans"), which would prohibit use of medication for abortions that were otherwise legal.

On November 18, 2024, the 9th Judicial District 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 et al.*, Civil Action No. 18853 (9th Jud. Dist. Ct., Teton Cnty. Wyo., Nov. 18, 2024) (Summary Judgment Order ¶ 4) ("*Johnson II*, SJ Order"). That decision is on appeal to the Supreme Court, which heard argument on April 16, 2025.

In the 2025 session, the Legislature adopted House Bill 64—a restriction on medication abortion care ("Ultrasound Requirement")—in addition to another law, House Bill 42, which limits access to procedural abortion care and targeting the sole procedural abortion provider in Wyoming ("ASC Requirement") (together the "Criminal TRAP Laws"), currently codified at Wyo. Stat. Ann. §§ 35-6-201 *et. seq*.[2] The Ultrasound Requirement limits patient access to medication abortion care by requiring patients to first have an ultrasound, listen to and view the fetal heart motion, and then wait 48 hours before a provider may dispense the medication. Wyo. Stat. Ann. §§ 35-6-201 through 35-6-202 (2025). Before dispensing medication, a health care provider must "verify" these requirements occurred, *id.* § 35-6-201(e), or risk criminal penalties, *id*. § 35-6-201(f).

On March 21, 2025, Plaintiffs brought this action, seeking a temporary restraining order against the Criminal TRAP Laws. Plaintiffs include a clinic that provides both procedural and medication abortion care, a Wyoming woman of reproductive age, licensed physicians, and a

[2] For purposes of this Motion, Plaintiffs adopt the language of the Court to refer to the preliminarily enjoined Criminal TRAP Laws as the ASC Requirement and the Ultrasound Requirement.

nonprofit organization that facilitates abortion access for Wyoming women.[3] The initial complaint asserted constitutional claims for violations of the rights of Plaintiffs and/or Plaintiffs' patients to make their own health care decisions under article I, section 38 of the Wyoming Constitution, violations of equal protection, and a void for vagueness claim.

On April 21, 2025, this Court issued a preliminary injunction, recognizing the serious, irreparable harm to Plaintiffs and Wyoming women if the Criminal TRAP Laws remained in effect. *See* PI Order at 9–10. As it relates to restrictions on medication abortion care, this Court held that transvaginal ultrasounds were not "necessary to obtain informed consent" from patients seeking medication abortion care and that a mandatory 48-hour waiting period "serve[d] no legitimate purpose." *Id*. at 8–9. This Court further observed that House Bill 64 could not generally promote women's reproductive health, when it applied only to women seeking abortions. *Id*. at 8.

On May 1, 2025, Plaintiffs amended their pleading to modify the parties and add challenges, pursuant to Rule 15(a)(1)(B) of the Wyoming Rules of Civil Procedure. *See generally* First Amended Compl. ("FAC"). In particular, Plaintiffs added a claim challenging Section 402(b)(iii) of House Bill 164. *See* House Enrolled Act No. 74, H.R. 164, 68th Leg., Gen. Sess. (Wyo. 2025); Wyo. Stat. Ann. §§ 33-1-402(b)(iii).

The final complete text of House Bill 164 reads as follows:

PRESCRIBING AND DISPENSING DRUGS FOR OFF-LABEL INDICATION

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

[3] Pursuant to the First Amended Complaint, Just The Pill is no longer a plaintiff in this action.

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.

STATEMENT OF FACTS

House Bill 164 authorizes Wyoming physicians and pharmacists to prescribe and dispense FDA-approved prescription drugs for off-label indications without risk of "adverse action from a health related licensing board," but improperly excepts from this protection prescriptions for drugs "[i]ntended to induce an abortion." Wyo. Stat. Ann. §§ 33-1-402(b)(iii), 33-1-403(a). In other words, House Bill 164 does not authorize the prescription or dispensing of FDA-approved drugs for abortion care if such care is not indicated on their label and does not protect physicians or prescribers of these medications from "disciplinary action" by the Wyoming state board of medicine, state board of pharmacy, other health related licensing boards. *Id*.

House Bill 164 singles out abortion medications notwithstanding the fact that off-label use of FDA-approved drugs, including abortion medications, is common, safe, and effective in the medical field. As a result, physicians and pharmacists could potentially face the risk of disciplinary action from prescribing or dispensing of a variety of medications for off-label use in abortion care and miscarriage management, making it difficult or impossible to access medications for such uses. The legislation indirectly bans abortion medication by threatening physicians and pharmacists with disciplinary actions for prescribing off-label use.

I. MEDICATION ABORTION IS AN EXTREMELY SAFE MEDICAL PROCEDURE.

The most common regimen of medication abortion involves the combination of two medications: mifepristone and misoprostol. Ex. 1, Hinkle Suppl. Decl. ¶ 7; Ex. 2, Burkhart Suppl. Decl. ¶ 4. Under standard medical practice, a health care provider first administers mifepristone to terminate a pregnancy up to 12 weeks' gestation, either via a single or double dose, depending on the gestational age of the fetus. Ex. 1, Hinkle Suppl. Decl. ¶ 7 (explaining that dosages may vary depending on the stage of pregnancy, in addition to other factors). Then, the patient typically takes between 600 and 800 μg of misoprostol 24 to 48 hours later. *Id*. The dosing and specific protocols vary slightly depending on the gestational age of the fetus, whether the patient has previously been pregnant, and other factors, but the above-mentioned combination regimen is widely accepted as safe by health care professionals in the United States. Ex. 1, Hinkle Suppl. Decl. ¶¶ 7–8, 12; Ex. 2, Burkhart Suppl. Decl. ¶¶ 4, 8.

For many women, medication abortion offers important advantages over procedural abortion. Ex. 7, Anthony Decl. ¶ 23. It allows them to avoid procedural abortion and to experience the abortion in a non-clinical setting (usually at home). Ex. 2, Burkhart Suppl. Decl. ¶ 8; Ex. 7, Anthony Decl. ¶ 23. Victims of sexual assault or trauma may choose medication abortion care to avoid a more physically invasive procedural abortion. Ex. 2, Burkhart Suppl. Decl. ¶ 8. For some patients, a medication abortion is the only option, based on the medical history or circumstances unique to the patient. *Id*.

It is well established that abortion is far safer than pregnancy and childbirth. Ex. 7, Anthony Decl. ¶¶ 17–18, 56. In fact, abortion medications are widely regarded as safer than Tylenol and Viagra. Ex. 8, Amaon Decl. ¶ 20 n.5. 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, including medication abortions, "are safe and

effective. Serious complications are rare." Ex. 7, Anthony Decl. at Attachment E (2018 Nat'l Acads. Sciences, Engineering, & Medicine Consensus Study Report) at 10, 77, 163–64; *see also* Ex. 8, Amaon Decl. ¶ 20; Ex. 5, Burkhart Decl. ¶ 25; Ex. 6, Nouhavandi Decl. ¶¶ 7–8.

Nor is there any credible argument that medication 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 (2023). This includes, among other things, statistics on the numbers and types of abortion procedures performed, as well as any complications associated with abortions. *Id.* §§ 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] In fact, 92.4% of the induced terminations of pregnancy performed or prescribed in Wyoming from 2020 through 2023 were conducted with medication abortion. *See 2023 Induced Termination of Pregnancy (ITOP) Report*, WYO. DEP'T OF HEALTH, at Table 2 (Jun. 30, 2024), https://health.wyo.gov/wp-content/uploads/2024/07/WDH-2023-Induced-Termination-of-Pregnancy-Report.pdf. For these reasons, and others, the *Johnson II* court previously determined that "the uncontested facts establish that abortion procedures are safe and effective." *Johnson II*, SJ Order ¶ 64. Thus, placing restrictions on medication abortion care will do nothing to protect women's health and general welfare, but forcing women to remain pregnant will increase health risks.

[4] The 2023 Induced Termination of Pregnancy ("ITOP") Report notes that for a small number of abortions during the four-year period, it was "[u]nknown" 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. DEP'T OF HEALTH, at Table 3 (Jun. 30, 2024), https://health.wyo.gov/wp-content/uploads/2024/07/WDH-2023-Induced-Termination-of-Pregnancy-Report.pdf.

II. EVIDENCE-BASED, OFF-LABEL USE OF FDA-APPROVED MEDICATIONS, INCLUDING MIFEPRISTONE AND MISOPROSTOL, IS COMMON, SAFE, AND EFFECTIVE.

"Evidence-based" or "off-label" use of medications is a common and essential part of medical practice, allowing providers to care for patients according to the best medical evidence and in the best interest of the patient. Indeed, Representative Gary Brown—the sponsor for House Bill 164—recognized as much when he stated that off-label prescription drugs are "believed to be the best, most effective, and fastest way to find drugs to treat new and existing diseases." Wyo. Legislature, *House Lab., Health & Soc. Servs. Comm.*, YOUTUBE (Jan. 27, 2025), https://www.youtube.com/watch?v=dH6wTxyDsL4 at 00:03:22–04:05. Common off-label uses for medications include metformin for polycystic ovary syndrome (approved use is for Type 2 diabetes), propranolol for anxiety and migraines (approved use is for hypertension and arrhythmias), tranexamic acid to prevent intra-operative and post-partum hemorrhage (approved use is in hemophiliacs to reduce bleeding with dental extraction), and ondansetron to treat a wide range of nausea including hyperemesis gravidarum in obstetrical care (approved use is to treat nausea due to chemotherapy). Ex. 1, Hinkle Suppl. Decl. ¶ 5.

In approving drugs for distribution, the FDA does not test medications. Ex. 3, Nouhavandi Suppl. Decl. ¶ 5. Rather, manufacturers of drugs submit evidence from clinical trials to the FDA for evaluation to demonstrate that the drug is safe and effective for its intended use. *Id.* The FDA then assesses those studies and reviews and approves the drug's labeling. Ex. 3, Nouhavandi Suppl. Decl. ¶ 5; *see generally Dev. & Approval Process: Drugs*, FDA (Aug. 8, 2022), https://www.fda.gov/drugs/development-approval-process-drugs. If the FDA determines that the drug's health benefits outweigh its known risks for that particular use, the FDA approves the drug for sale along with its proposed label, sometimes with an accompanying risk evaluation and mitigation strategy ("REMS") to ensure the drug's benefits continue to outweigh the risks. 21

U.S.C. § 355-l(a)(l) (2022).[5]

Once a drug is approved by the FDA, health care providers may prescribe the drug for unapproved or off-label use when "they judge that it is medically appropriate for their patient." *Understanding Unapproved Use of Approved Drugs "Off Label,"* FDA (Feb. 5, 2018), https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label. Among physicians, the practice of administering medication to reflect clear, significant, generally accepted developments in medical research is common, and is referred to as "off-label" or "evidence-based" medicine. As the FDA has explained, "using an approved drug for an [off-label] use" is a decision made between a patient and her health care provider. *Id.*; *see also* Ex. 1, Hinkle Suppl. Decl. ¶ 5; Ex. 2, Burkhart Suppl. Decl. ¶ 7.

The current printed label for mifepristone states that the drug is "indicated, in a regimen with misoprostol, for the medical termination of intrauterine pregnancy through 70 days gestation," or within 70 days of the patient's last missed period ("LMP"). *Mifeprex Label*, FDA § 1 (Mar. 2023), https://www.accessdata.fda.gov/drugsatfda_docs/ label/2023/020687Orig1s026lbl.pdf. The dosage and administration, approved by the FDA in 2016, specifies 200 mg of mifepristone taken orally, followed 24 to 48 hours later by 800 µg of misoprostol taken buccally. *Id.*

While the label for mifepristone calls for a two-drug abortion regimen with misoprostol, the on-label use for misoprostol does not include termination of an intrauterine pregnancy. The

[5] While the FDA implemented restrictions for mifepristone when first approving its use under a provision then known as "subpart H," 21 C.F.R. §§ 314.500–560 (2024), and later under a REMS, there have been broad calls from the medical community to eliminate it based on mifepristone's safety record. Indeed, in 2021, the FDA removed the in-person dispensing requirement to mifepristone, in addition to other restrictions. *See Updated Mifepristone REMS Requirements*, ACOG: PRACTICE ADVISORY (Jan. 2023), https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2023/01/updated-mifepristone-rems-requirements.

current printed label for misoprostol states that the drug is "indicated for reducing the risk of NSAID (nonsteroidal anti-inflammatory drugs, including aspirin)–induced gastric ulcers in patients at high risk of complications from gastric ulcer." *Cytotec Label*, FDA at 1, 5–6 (Feb. 2018), https://www.accessdata.fda.gov/drugsatfda_docs/label/2018/019268s051lbl.pdf.

The importance of off-label prescribing is made plain by physicians' use of mifepristone for abortion-related care. When mifepristone was approved by the FDA in 2000, the label provided that mifepristone was "indicated for the medical termination of intrauterine pregnancy through *49 days*' pregnancy." *Mifeprex Label*, FDA at 6 (Sep. 28, 2000), https://www.accessdata.fda.gov/drugsatfda_docs/label/2000/20687lbl.pdf (emphasis added). The FDA approved "[t]hree 200 mg tablets (600 mg)" of the medication to be "taken in a single oral dose," to be followed two days later by "two 200 μg tablets (400 μg) of misoprostol orally." *Id.* at 14. However, shortly after approval, research demonstrated that a modified dosage of mifepristone and misoprostol was effective through *70 days'* gestation. *See Medication Abortion Up to 70 Days of Gestation*, ACOG: PRACTICE BULLETIN (Oct. 2020), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/10/medication-abortion-up-to-70-days-of-gestation; *see also* S. Henshaw, et al., *The Accessibility of Abortion Services in the United States, 2001*, 35 PERSPECT. ON SEXUAL & REPROD. H. 16, 21 (2003) (less than one year after the approval of the 2000 FDA label, 83% of abortion providers prescribed a reduced dose of mifepristone for medication abortions). As a result, abortion providers transitioned to prescribing a formulation that differed from the original FDA label—both a lower dosage of mifepristone and for an extended period of pregnancy. *Id.*; *see also* Ex. 1, Hinkle Suppl. Decl. ¶ 7; Ex. 2, Burkhart Suppl. Decl. ¶¶ 7, 8. This practice continues today. Ex. 1, Hinkle Suppl. Decl. ¶ 7; Ex. 2, Burkhart Suppl. Decl. ¶¶ 7, 8. In fact, in 2016, the FDA approved changes to the label for mifepristone to adopt this evidence-based regimen, which is now the standard of care in clinical settings. *Updated*

Mifepristone REMS Requirements, ACOG: PRACTICE ADVISORY (Jan. 2023), https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2023/01/updated-mifepristone-rems-requirements. The use of misoprostol in the abortion regimen similarly demonstrates the safety and efficacy of its off-label use. The FDA's inclusion of the use of misoprostol in the label for mifepristone is further evidence of the safety and commonplace nature of what are initially off-label uses. Ex. 1, Hinkle Suppl. Decl. ¶ 9; Ex. 2, Burkhart Suppl. Decl. ¶ 5.

There is evidence of additional, safe off-label uses of mifepristone and misoprostol for abortion care. As it relates to elective abortion care, clinical research has demonstrated that mifepristone is a safe and effective way to terminate a pregnancy beyond 70 days' gestation. Indeed, many providers, including Plaintiff Wellspring, prescribe medication abortion care to patients up to 84 days, or 12 weeks' gestation. Ex. 2, Burkhart Suppl. Decl. ¶ 8; *see also* K. Whitehouse, et al., *Med. regimens for abortion at 12 weeks and above: a systematic rev. and meta-analysis*, NAT'L LIBR. OF MED. (Aug. 20, 2020), https://pubmed.ncbi.nlm.nih.gov/32954250/. Research also demonstrates that in the absence of mifepristone, a misoprostol-only regimen is an acceptable alternative to induce abortion. *See Medication Abortion Up to 70 Days of Gestation*, ACOG: PRACTICE BULLETIN (Oct. 2020), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/10/medication-abortion-up-to-70-days-of-gestation; *see also* Ex. 1, Hinkle Suppl. Decl. ¶ 8. In fact, there are certain medical conditions where mifepristone is contraindicated, and a misoprostol-only regimen is the only option. Ex. 1, Hinkle Suppl. Decl. ¶ 8. For instance, women with certain bleeding disorders, chronic adrenal conditions, or an allergy to the mifepristone, may need to use misoprostol alone for medication abortion care, Ex. 1, Hinkle Suppl. Decl. ¶ 8, which is an "off-label" use. Relatedly, dosages of mifepristone and/or misoprostol may be different for each patient, based on the best medical judgment of the

providing physician. Factors including the patient's age, health condition, and whether this is a patient's first pregnancy impact the recommended dosage. Ex. 1, Hinkle Suppl. Decl. ¶ 7. Such off-label prescriptions for abortion care are determined by physicians using the best available evidence and knowledge of their patients. Ex. 2, Burkhart Suppl. Decl. ¶ 7.

Evidence-based use of mifepristone and misoprostol is also common for other forms of gynecological care to terminate pregnancy or manage a partially terminated pregnancy. First and foremost, a combination of mifepristone and misoprostol may be administered by physicians and prescribed by pharmacists for miscarriage management. Ex. 1, Hinkle Suppl. Decl. ¶¶ 11–12; Ex. 2, Burkhart Suppl. Decl. ¶¶ 8, 11. In instances where the fetus has died but not yet been expelled from the uterus, mifepristone may be administered to soften the cervix and increase sensitivity to misoprostol. Ex. 1, Hinkle Suppl. Decl. ¶¶ 11–12; Ex. 2, Burkhart Suppl. Decl. ¶¶ 8, 11. Misoprostol is then administered 24 to 48 hours later to expel any retained tissue. Ex. 1, Hinkle Suppl. Decl. ¶ 12. This off-label treatment is safe, effective, and oftentimes critical to ensure that patients who are suffering from a miscarriage are expelling remaining fetal tissue and reducing the risk of infection or sepsis. Ex. 1, Hinkle Suppl. Decl. ¶ 19; Ex. 2, Burkhart Suppl. Decl. ¶ 11.

In addition to miscarriage management, mifepristone and misoprostol may be administered before a procedural abortion. For instance, mifepristone may be administered the day before a dilation and evacuation ("D&E") to improve cervical softening and reduce the need for mechanical dilation. Ex. 1, Hinkle Suppl. Decl. ¶ 12; Ex. 2, Burkhart Suppl. Decl. ¶ 4. In the alternative, misoprostol may be administered the day of the procedure for cervical preparation. Ex. 1, Hinkle Suppl. Decl. ¶ 12; Ex. 2, Burkhart Suppl. Decl. ¶ 4. Administering mifepristone and/or misoprostol ahead of the procedure makes it safer for the patient and less challenging for the physician by avoiding mechanical dilation. Ex. 1, Hinkle Suppl. Decl. ¶ 12; Ex. 2, Burkhart Suppl. Decl. ¶ 8.

Relatedly, mifepristone and misoprostol may be administered to terminate a second-trimester pregnancy in the case of fetal anomalies—genetic conditions that are incompatible with life—or when maternal health conditions require termination to protect the life of the mother. Ex. 1, Hinkle Suppl. Decl. ¶ 12. Mifepristone may be administered to help improve the efficacy of a procedure, and misoprostol may be administered to induce labor. Ex. 1, Hinkle Suppl. Decl. ¶¶ 11–12. These medications reduce pain for patients and lower complication rates associated with the procedures. *Id*.

Off-label uses of mifepristone and misoprostol are also common for other forms of gynecological care. To induce labor, mifepristone is commonly used as a cervical ripening agent prior to the administration of oxytocin or misoprostol to stimulate uterine contractions. Ex. 1, Hinkle Suppl. Decl. ¶ 12; Ex. 7, Anthony Decl. ¶ 63. Mifepristone is used as a cervical ripening agent in other contexts too, including preparation for surgical procedures like hysteroscopies and prior to the insertion of intrauterine devices ("IUDs") to reduce pain, decrease the likelihood of complications, and make the procedure less technically demanding for the treating physician. Ex. 1, Hinkle Suppl. Decl. ¶ 11. Misoprostol is also commonly used to treat postpartum hemorrhage. *Id.*; Ex. 7, Anthony Decl. ¶ 63. None of these widely used procedures are indicated on the labels for mifepristone and misoprostol.

III. HOUSE BILL 164 IS EFFECTIVELY A BAN ON MEDICATION ABORTION WITH ADDITIONAL IMPACTS ON OTHER FORMS OF REPRODUCTIVE HEALTH CARE.

House Bill 164 threatens providers who prescribe mifepristone, misoprostol, and any other medication "[i]ntended to induce an abortion," for "conditions other than those stated in the labeling approved by the [FDA]." Wyo. Stat. Ann. §§ 33-1-401(a)(ii), 402(b)(iii). The law leaves physicians exposed to potential disciplinary action for providing medication abortion services, because at least some medication abortions are induced through off-label use. Currently, Plaintiff

Wellspring and other physicians in Wyoming prescribe mifepristone and misoprostol to their patients for medication abortions beyond 70 days' gestation, consistent with best-available medical evidence. Ex. 2, Burkhart Suppl. Decl. ¶ 8. Plaintiff Wellspring may no longer be able to staff or hire physicians willing to prescribe abortion medications beyond 70 days' gestation due to the risks associated with House Bill 164. *Id.* ¶ 13. More broadly, women across Wyoming may be unable to find providers willing to administer medication abortion care beyond 70 days' gestation. *Id.* Patients who are unable to access mifepristone, or who have an allergy or a contraindication for mifepristone, and therefore would need to rely on misoprostol only, may be unable to access abortion medication services due to the lack of "on-label" indication for misoprostol alone for intrauterine pregnancy termination. Ex. 1, Hinkle Suppl. Decl. ¶ 10. All these restrictions may force patients to travel out-of-state to obtain a medication abortion, obtain a procedural abortion against their preference or medical indication, or remain pregnant against their will, resulting in delays in accessing care and exposing Wyoming women to further additional health risks and emotional distress. Ex. 2, Burkhart Suppl. Decl. ¶¶ 15–16.

Additionally, physicians may be subject to disciplinary action for departing from other administration specifications on the FDA-approved label. The mifepristone label stipulates that a pregnancy must be dated based on the last menstrual period and a clinical examination, in addition to specifying a follow-up assessment one to two weeks after administration of the medications. *See Mifeprex Label*, FDA §§ 2.1, 2.3 (Mar. 2023), https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s026lbl.pdf. Standard medical practice, however, has replaced clinical examinations and follow-up appointments with the option to be evaluated through a telehealth appointment. Ex. 2, Burkhart Suppl. Decl. ¶ 8. The FDA itself permanently lifted the in-person dispensing requirement in 2023 to reflect the latest changes in evidence-based care and clinical practices. *E.g.*, *Mifepristone REMS - 020687ORIG1s025 Summary Review*, FDA: CTR.

FOR DRUG EVALUATION AND RSCH. (Jan. 3, 2023), https://www.accessdata.fda.gov/drugsatfda_docs/summary_review/2023/020687Orig1s025SumR.pdf.

Not only does House Bill 164 create uncertainty for physicians providing medication abortion services, but the law also leaves physicians exposed to potential disciplinary action for administering or prescribing abortion medications before, during, or after ***procedural*** abortions. Whether a patient seeks a procedural abortion from Plaintiff Wellspring, or is forced to terminate a pregnancy due to a lethal fetal anomaly during the second trimester, Plaintiffs and other physicians may be unable to safely administer mifepristone or misoprostol to make the abortion procedure less painful for the patient. Ex. 1, Hinkle Suppl. Decl. ¶¶ 15, 19; Ex. 2, Burkhart Suppl. Decl. ¶ 12. Moreover, since House Bill 164 lacks any definition of "abortion," physicians and pharmacists may hesitate and delay treatment for women suffering from serious, life-threatening conditions. Ex. 2, Burkhart Suppl. Decl. ¶ 3. In instances where the fetus has died but has not yet been expelled from the uterus, creating a risk of infection and sepsis for the woman, physicians may be unsure whether they can administer mifepristone and/or misoprostol to induce contractions to expel any retained tissue—an "off-label" use that induces "abortion." Ex. 1, Hinkle Suppl. Decl. ¶ 15; Ex. 2, Burkhart Suppl. Decl. ¶ 11.

Ultimately, the effective ban on abortion care flowing from House Bill 164 will not only harm pregnant patients seeking abortion services but will likely impact women across Wyoming who need mifepristone or misoprostol for other forms of reproductive care. Pharmacists who are unable to discern when a prescription for these medications is used for the purpose of "induc[ing] an abortion," may be unwilling to fill the prescription for patients in Wyoming. Physicians, including Plaintiffs, who keep these medications on hand may also face restrictions and supply issues, making it more challenging to take care of all their patients, not just their patients seeking abortion-related care. Indeed, physicians in Wyoming already struggle to access mifepristone

from in-state pharmacies. Ex. 1, Hinkle Suppl. Decl. ¶ 11. Limitations in access to these medications, which typically reduce discomfort and pain associated with gynecological procedures, will only result in further physical harm and physiological stressors to women in Wyoming.

As a result, House Bill 164 will interfere with routine off-label uses of abortion-inducing medications, physicians may be unable to prescribe and administer these medications, pharmacists may be unable to fill prescriptions for these medications, and Wyoming women may be unable to access medication abortion care, in addition to countless other restrictions and harms, resulting in substantial burdens on Wyoming women. *See infra* Argument, Section I.A.2(ii) (further explaining the burdens imposed by House Bill 164 in violation of the Wyoming Constitution).

LEGAL STANDARD

This court may issue a preliminary injunction 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); *see also* Wyo. Stat. Ann. § 1-28-102 (2025); Wyo. R. Civ. P. 65(a). As demonstrated below, Plaintiffs are substantially likely to prevail on the merits of their constitutional claim, and Plaintiffs will suffer irreparable harm should Section 402(b)(iii) go into effect on July 1, 2025. 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.

Section 402(b)(iii) violates numerous rights guaranteed by the Wyoming Constitution. For the purposes of this motion, we focus on the constitutional right of Wyoming citizens to control their own health care, free from undue government interference, and the constitutional right of

physicians to equal protection under the law. All Plaintiffs challenge Section 402(b)(iii) both facially and as applied.

A. House Bill 164 Violates Wyo. Const. Art. I, § 38 – Health Care.

Article I, section 38 ("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; *see Johnson II*, SJ Order ¶ 37.

Both the statutory language and the evidence conclusively demonstrate that Section 402(b)(iii) unreasonably restricts necessary and appropriate medical care for Wyoming women without any "link . . . to women's safety and general welfare." PI Order at 8. As such, the statute is not "reasonable and necessary" to protect public health and welfare ***and*** contravenes the Legislature's duty to avoid undue infringement of this right. Section 402(b)(iii) therefore violates Section 38.

1. Abortion Is Health Care Under Section 38.

Abortion is health care. In granting summary judgment and a permanent injunction against the Abortion Bans, the *Johnson II* court held that the plain meaning of "health care"

"unambiguously" encompassed abortion. *Johnson II*, SJ Order ¶¶ 47–48, 50. In reaching this decision, the Court relied on the common definitions of health care as "efforts made to maintain or restore health esp[ecially] by trained and licensed professionals," *id.* ¶ 43 (quoting Merriam-Webster's Collegiate Dictionary (11th ed. 2012)), "[c]are for the general health of a person . . . esp[ecially] that provided by an organized health service," *id.* (quoting Oxford English Dictionary (2d. ed. 1996)), and the "providing of medical services," *id.* (quoting Cambridge Dictionary of American English 400 (2d. ed. 2008)).

The *Johnson II* 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. 7, Anthony Decl. 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, that 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, "[h]ealth 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) (2007) (emphasis added). This definition plainly encompasses abortion-related care.

Lastly, it is clear from the face of House Bill 164 that the statute regulates health care. House Bill 164 directly relates to medical "professions and occupations" and provides authority and immunities to medical professionals, including medication "prescribers" and pharmacists. House Enrolled Act No. 74, H.R. 164, 68th Leg., Gen. Sess. (Wyo. 2025); Wyo. Stat. Ann. § 33-

1-403 (2025). Furthermore, House Bill 164 directs multiple health licensing boards to engage in rulemaking to further regulate the medical and pharmaceutical professions. *Id.* § 33-1-403 (Section 2). It is beyond credible dispute that House Bill 164 regulates health care.

2. Section 402(b)(iii) Violates Section 38.

Because abortion unambiguously is a health care decision under Section 38, the Legislature may only (1) "determine reasonable and necessary restrictions . . . to protect the health and general welfare of the people" that (2) do not result in "undue governmental infringement" of the right of Wyomingites to make their own abortion-related decisions. Wyo. Const. art. I, § 38(c)–(d); *Johnson II*, SJ Order ¶ 54. On its face, Section 402(b)(iii) does not satisfy either of these constitutional requirements.

As this Court held in its prior preliminary injunction order, strict scrutiny applies to the Court's review of the statute's constitutionality because this matter involves a fundamental right under the Wyoming Constitution. PI Order at 7; *see also Ailport v. Ailport*, 2022 WY 43, ¶ 27, 507 P.3d 427, 438 (Wyo. 2022); *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."). "The salient question thus becomes whether the law[] at issue [is a] 'reasonable and necessary' restriction[] protecting general health and welfare and whether [it] promote[s] a compelling government interest." PI Order at 7–8. A statute that is "necessary" to protect the public health and welfare and 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, Section 402(b)(iii) cannot survive any level of scrutiny: the exception would fail even the rational-basis test because it is "beyond a reasonable doubt, not related to a legitimate government interest." *Hardison v. State*, 2022 WY 45, ¶ 10, 507 P.3d 36, 40 (Wyo. 2022) (citation omitted); *see also Nehring v. Russell*, 582 P.2d 67, 77 (Wyo. 1978) ("[T]he classification must be

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

(i) Section 402(b)(iii) Is Not "Reasonable And Necessary" to Protect Health and General Welfare.

Section 402(b)(iii) is not "reasonable and necessary" to protect "health and general welfare," Wyo. Const. art. I, § 38(c), nor does the exception achieve any compelling or legitimate state interests, as required to withstand constitutional scrutiny.

When introducing House Bill 164 in the House Committee on Labor, Health, and Social Services, the bill's sponsor, Representative Brown, explained the purpose of the statute:

> Off-label prescription drugs use has been practiced in medical communities for decades. This is believed to be the best, most effective, and fastest way to find drugs to treat new and existing diseases. It has only been in recent years that the use of certain drugs have been restricted for doctors to use in what they believe would be the best interest of their patients. This bill would strengthen and do just that.

Wyo. Legislature, *House Lab., Health & Soc. Servs. Comm.*, YOUTUBE (Jan. 27, 2025), https://www.youtube.com/watch?v=dH6wTxyDsL4 at 00:03:34–04:04. When asked why the statute created an exception for medications "[i]ntended to induce an abortion," Representative Brown explained that the exception was designed to "cover" the law that is "currently tied up in the courts"—i.e., the Medication Abortion Ban, Wyo. Stat. Ann. § 35-6-120 *et. seq.* (2023); Wyo. Legislature, *House Lab., Health & Soc. Servs. Comm*., YOUTUBE (Jan. 27, 2025), https://www.youtube.com/watch?v=dH6wTxyDsL4 at 00:16:36–16:57; *see also* Wyo. Legislature, *House Floor Session-Day 13, Jan. 30, 2025-PM*, YOUTUBE (Jan. 30, 2025), https://www.youtube.com/watch?v=rI4HzWCkhUU at 03:05:36–06:00 ("the reason that that was

put in there is in 2023, [the] chemical abortions . . . bill was passed, and that is tied up in the courts"). Representative Brown later explained that the exception is designed to "stop," for example, a woman who "knows she's pregnant and her intention is to have an abortion [with medication]." *Id.* at 03:18:41–19:05.

In other words, while House Bill 164 was intended to provide physicians with authorization and immunity to prescribe medications for off-label indications to provide care "in the best interest of their patients," Section 402(b)(iii) was designed to create yet another limitation on physicians to prescribe abortion medications, for all of the reasons that the State tried to outlaw abortion medications in 2023. For the same reasons that the earlier Medication Abortion Ban has been found to run afoul of strict scrutiny, *see Johnson II*, SJ Order ¶ 37, Section 402(b)(iii)'s purpose of aligning House Bill 164 with the Medication Abortion Ban also cannot survive strict scrutiny, *Ailport*, 2022 WY ¶ 27, 507 P.3d at 438; PI Order at 7.

Most importantly, Section 402(b)(iii) undeniably is not narrowly tailored to any government interest. This is because there are many off-label uses of abortion drugs, some related to abortion and some unrelated. If the law was designed to protect women, all off-label use of mifepristone, misoprostol, and other abortion inducing drugs would be prohibited, not just those "[i]ntended to induce an abortion." Yet, off-label use of both medications during delivery in a routine pregnancy appears to be authorized by the statute, as are the many other off-label uses of these medications unrelated to pregnancy. By authorizing some off-label uses of these medications (as well as all off-label uses of nearly every other medication), the Legislature abandoned any pretense that the exception for abortions has any connection to health and safety.

In addition to failing the strict scrutiny test, Section 402(b)(iii) violates the express terms of Section 38, under which the law must be ***reasonable and necessary*** to protect public health and welfare. Wyo. Const. art. I, § 38(c). Section 402(b)(iii) does not satisfy this requirement. Indeed,

the exception (1) harms maternal health and safety, and (2) harms medical providers, including the physician Plaintiffs, who act in the best interest of their patients, in accordance with evidence-based medical practices.

House Bill 164 Fails to Protect Maternal Health and Safety. Creating impediments to the prescription of abortion-inducing medications serves only to burden, penalize, and interfere with patients' right to make their own health care decisions, specifically, choosing a medication abortion. "Delays . . . increase the costs, logistics, and risks to the pregnant woman seeking to avail herself of her fundamental rights, and likely decrease or eliminate access to [abortion-related] services." *In re Hodes & Nauser MDS PA v. Kobach,* 2023 WL 7130406, at *21 (D. Kan. Jan. 1, 2023). As discussed, many patients strongly prefer—or even medically require—medication over procedural abortion care. Ex. 2, Burkhart Suppl. Decl. ¶ 8. Yet many of these patients may be unable to access medication abortion care because of Section 402(b)(iii), forcing them to make the choice between traveling outside the State to obtain care, undergo a procedural abortion, or be forced to carry a pregnancy against their will.

Even if Wyoming women can access abortion medication services from a few providers in the state, impediments to "off-label" prescribing for mifepristone and misoprostol limit access to care for some patients, without any benefit to maternal health or safety. For instance, a patient seeking medication abortion care for weeks 10 to 12 of their pregnancy may be turned away. If she is able to access procedural abortion care, she could be denied mifepristone to soften the cervix—making the procedure more painful for the patient and more technically challenging for the provider. Ex. 2, Burkhart Suppl. Decl. ¶ 6, 12. She may also be denied misoprostol to reduce the risk of bleeding and cramping from the procedural abortion, further increasing the risk of pain and health complications. *Id*. For a patient who can access medication abortion services before 10 weeks of pregnancy, Section 402(b)(iii) would force her to take the medication without any

dosage adjustments consistent with the medical standard of care, such as adjustments to account for a patient's age, the size of the fetus, or whether this is a first pregnancy. There is simply no legitimate reason for requiring Wyoming women to follow a regimen contrary to the medical standard of care. Courts have held that a law regulating off-label use of abortion medication such as this "'usurp[s] . . . providers' ability to exercise medical judgment,'" and "requir[es] them to administer a less safe, less effective treatment regimen." *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 916 (9th Cir. 2014) (quoting *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 543 (9th Cir. 2004)), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Furthermore, Section 402(b)(iii) may negatively impact patients who require mifepristone and misoprostol for other reasons because House Bill 164 does not define the term "abortion," nor does the statute explain the meaning of "***intended to induce*** an abortion." As a result, House Bill 164 creates potential risks for health care providers who would ordinarily prescribe and dispense mifepristone and/or misoprostol off-label for a variety of instances, including miscarriage management, lethal fetal anomalies, and in instances where termination of a pregnancy is necessary to save the life of the mother.

With respect to miscarriage management, physicians routinely administer a combination of mifepristone and misoprostol, or misoprostol alone, to stimulate uterine contractions to help expel pregnancy tissue in a partial or complete miscarriage. Ex. 1, Hinkle Suppl. Decl. ¶ 12. Because there is no definition of "induc[ing] abortion," physicians will not know whether they can treat these patients consistent with House Bill 164, creating a serious risk of infection, sepsis, and potentially death for women who miscarry. This means that a woman who is hemorrhaging and in critical condition, but whose fetus is not deceased, may be denied abortion medications to save her life, given the lack of clarity around what it means to intend to induce an abortion. *See* Ex. 4,

Hinkle Decl. ¶¶ 30, 34; Ex. 7, Anthony Decl. ¶ 43; Ex. 10, Johnson Decl. ¶ 19.

These same risks will manifest in cases where termination of pregnancy is necessary to save the life of the mother because the treating physician would not be able to conclude whether the treatment falls within the statute's contemplation of "abortion" care. Ex. 1, Hinkle Suppl. Decl. ¶ 15. Ectopic pregnancy, severe preeclampsia, pregnancy that exacerbates life-threatening pre-existing conditions, sepsis, and cancer, are just a few medical diagnoses that may lead a patient to terminate her pregnancy to protect her life and health. *Id*.

Physicians and their patients could also be impacted by uncertainty as to whether House Bill 164 authorizes use of misoprostol before a procedure to terminate pregnancy in the case of a lethal fetal anomaly during the second trimester. Ex. 1, Hinkle Suppl. Decl. ¶ 12. Physicians typically administer misoprostol to prepare the cervix before a D&E procedure to make the procedure less painful for the patient, and to reduce the need to mechanically dilate the cervix. *Id.*

The risk of professional discipline as a result of providing care to patients in these life-threatening situations plainly demonstrates that the exception was not designed to protect maternal health and safety. In striking down a similar restriction on access to mifepristone, the Oklahoma Supreme Court held that restrictions on off-label prescriptions for mifepristone are "so completely at odds with the standard that governs the practice of medicine that [they] can serve no purpose other than to prevent women from obtaining abortions and to punish and discriminate against those who do." *Cline v. Okla. Coal. for Reprod. Just.*, 2013 OK 93, ¶ 27, 313 P.3d 253, 262 (Okla. 2013).

Limiting the availability of abortion medications will make it substantially harder, if not impossible, for women to access these medications for other treatments that fall ***within*** the permitted off-label uses, further impacting patients' ability to make health care decisions in violation of Section 38. For instance, while using misoprostol to treat postpartum hemorrhage is

permissible under the statute—because for ***that*** purpose, the medication would not be intended for abortion, *see* Wyo. Stat. § 33-1-402(a)—a physician may not be able to obtain misoprostol due to the liabilities pharmacists face when dispensing the medication. *See* Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2 Burkhart Suppl. Decl. at ¶ 14. Similarly, mifepristone is used for a variety of other off-label uses that are permissible under the statute, including uterine fibroids and endometriosis, Ex. 1, Hinkle Suppl. Decl. ¶ 12, but the medication is already difficult to obtain for physicians in Wyoming, *see id.* ¶ 11, and House Bill 164 will compound this shortage, impacting women's general health and welfare. Ex. 1, Hinkle Suppl. Decl. ¶ 18.

If the law was designed to protect women, ***all*** off-label uses of mifepristone, misoprostol, and other abortion-inducing drugs would be prohibited, not just those "[i]ntended to induce an abortion." Yet, as discussed, *supra* at 23, off-label use of both medications during delivery is plainly authorized by the statute. As are the many other off-label uses of these medications unrelated to pregnancy. By authorizing some off-label uses of these medications (as well as all off-label uses of every other medication), the Legislature abandoned any pretense that the exception for abortions in Section 402(b)(iii) has any connection to health and safety.

Section 402(b)(iii) is a de facto—albeit clumsy—ban on medication abortion. Wyoming courts have already ruled that an outright ban on abortion medication does not withstand scrutiny under Section 38. *Johnson II*, SJ Order ¶ 74 ("[T]he Abortion Statutes suspend a woman's right to make her own health care decisions during the entire term of a pregnancy and are not reasonable or necessary to protect the health and general welfare of the people."); *id.* ("[T]he State has enacted laws that impede the fundamental right to make health care decisions . . . . The Defendants have not established a compelling governmental interest to exclude pregnant women from fully realizing the protections afforded by the Wyoming Constitution during the entire term of their pregnancies, nor have the Defendants established that the Abortion Statutes accomplish their

interest."). Because Section 402(b)(iii) is not reasonable and necessary to protect women's health, the exception violates Section 38(c).

(ii) Section 402(b)(iii) Unduly Infringes on the Constitutional Right of Women to Make Their Own Health Care Decisions.

Section 402(b)(iii) also violates Section 38(d) because it unduly infringes on women's right to make their own health care decisions. This exception to the general authorization of off-label uses will make medication abortions more difficult or impossible to obtain in Wyoming. *See supra* Statement of Facts, Section III; Argument, Section I.A. As a result, women will not have the ability to make their own decisions when it comes to essential health care involving abortion.

Off-label uses of medication for abortion are beneficial, safe, and provide greater autonomy in health care decision making for women. Compared to procedural abortion, medication abortion, including off-label medication, is significantly cheaper, less physically invasive, and able to be administered in the comfort of a patient's home, which is especially favorable for women who cannot afford to arrange for a procedural abortion or who wish to minimize the risk of social stigma and harassment from being seen in a clinical setting. *See supra* Statement of Facts, Section I. Medication abortion is also the only option for some women whose medical history puts them at greater risk with a procedural abortion. Ex. 2, Burkhart Suppl. Decl. ¶ 8. Off-label abortion medication provides medical flexibility for women who may require different dosages, prescriptions outside of the gestational window indicated on the label, or who live in areas where on-label medication is inaccessible. *See supra* Statement of Facts, Section II; Ex. 1, Hinkle Suppl. Decl. ¶ 8. Off-label medication can also be significantly more cost-effective compared to name brand abortion medication. Ex. 2, Burkhart Suppl. Decl. ¶ 8. Finally, off-label abortion medication is widely prescribed and endorsed by health care providers because of its safety and efficacy. *See supra* Statement of Facts, Section I; Ex. 2, Burkhart Suppl. Decl. ¶ 7. Section 402(b)(iii) threatens these numerous benefits.

Section 402(b)(iii) Constitutes Undue Infringement Because It Creates Significant Barriers to Accessing Abortion Care. House Bill 164 violates Section 38(d) for similar reasons why it is unreasonable and unnecessary under subsection (c). As explained, House Bill 164 will create significant access issues to abortion care and other care supported by the same medications. Without the benefit of these medications, patients will be forced to have unnecessary procedural abortions, which are more expensive, more invasive and, at times, less medically desirable than medication abortions. Ex. 2, Burkhart Suppl. Decl. ¶ 8. In addition, because Wellspring is the only procedural abortion provider in the state, this increases a patient's travel time and costs—or will require her to travel outside of the state—to obtain an abortion. Wyomingites forced to travel out of state for a procedural abortion will suffer additional costs and burdens of substantial travel. Ex. 7, Anthony Decl. ¶ 61; Ex. 9, Lichtenfels Decl. ¶¶ 18–19. At this time, the nearest clinics providing abortion outside of Wyoming are hundreds of miles away. Ex. 7, Anthony Decl. ¶ 60; Ex. 9, Lichtenfels Decl. ¶¶ 18–19. 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." *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 992 (W.D. Wis. 2015); *see also Planned Parenthood Se., 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").

Those who will have to travel out-of-state for care will likely receive care later in their pregnancies than if they otherwise had access to abortion in Wyoming. Ex. 7, Anthony Decl. ¶ 61; Ex. 9, Lichtenfels Decl. ¶¶ 18–19. Some Wyomingites may also be forced to compromise the

confidentiality of their decision to have an abortion to obtain transportation or childcare. Ex. 7, Anthony Decl. ¶ 61; Ex. 8, Amaon Decl. ¶ 13; Ex. 9, Lichtenfels Decl. ¶ 18. House Bill 164 also necessitates missing additional work, arranging childcare, and arranging transportation. *See* Ex. 10, Johnson Decl. ¶ 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. 7, Anthony Decl. ¶ 34; Ex. 9, Lichtenfels Decl. ¶ 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. 8, Amaon Decl. ¶ 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. 4, Hinkle Decl. ¶ 22; Ex. 5, Burkhart Decl. ¶ 40; Ex. 7, Anthony Decl. ¶ 61; Ex. 9, Lichtenfels Decl. ¶ 13; *see also HLS Healthcare Facility Directory*, WYO. DEP'T OF HEALTH, at 5–6, 14–15 (Jan. 21, 2025), https://health.wyo.gov/wp-content/uploads/2025/01/ 2024-2025-Facility-Directory.pdf.

Section 402(b)(iii) Constitutes Undue Infringement Because It Creates Significant Barriers to* Other *Forms of Health Care. Because House Bill 164 fails to define abortion, it is unclear if these medications can be used for other conditions that might be "[i]ntended to induce an abortion," such as treating miscarriage, treating a lethal fetal anomaly, and saving the life of the mother. *See supra* Argument, Section I.A.2(ii).

Through creating and compounding significant barriers to access and forcing medically unnecessary procedures, the law unduly infringes into Wyomingites' private lives, well-being, and sensitive medical decisions. Section 402(b)(iii) undermines, rather than furthers, the State's asserted purposes and unduly interferes with necessary and appropriate medical care for Wyoming

women in violation of Section 38(d). For the reasons articulated above, Plaintiffs have demonstrated a substantial likelihood of success on their Section 38 claim, and the Court should grant a preliminary injunction enjoining enforcement of Section 402(b)(iii).

B. House Bill 164 Violates Wyo. Const. Art. I, §§ 2, 3, 34 – Equal Protection

House Bill 164 violates Wyoming's expansive equal protection clauses by subjecting abortion providers to more stringent requirements than other similarly situated physicians and entities. Section 402(b)(iii) treats abortion healthcare providers differently than all other health care professionals.

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 I, 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." *Id.* 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." *Id.* art. I, § 3 (emphasis added). And Article VI, Section 1 guarantees that all "citizens of this state shall equally enjoy all civil, political, and religious rights and privileges." *Id.* art. VI, § 3. 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 Exam'r'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." *Johnson*, 838 P.2d 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 ex rel. 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." *Washakie*, 606 P.2d at 333. For "ordinary interests," there must be a "rational relationship between a classification made by the statute" and "a legitimate state objective." *Id.* This rational relationship "must rest not on conjecture but must be supported by something of substance." *Nehring*, 582 P.2d at 77. Because Section 402(b)(iii) implicates fundamental rights under Section 38, it is subject to strict scrutiny. But the law cannot withstand any level of scrutiny, because it does not further any state interest, compelling or otherwise.

Section 402(b)(iii) violates the equal protection rights of abortion providers by excepting from protection all providers who prescribe medications "[i]ntend[ing] to induce an abortion" while granting protection to providers who administer or prescribe the ***same*** medications for different procedures without any explanation or medical justification. For example, misoprostol could likely be prescribed to treat postpartum hemorrhaging after the delivery of a viable fetus but could not be prescribed for a medication abortion or for the delivery of a non-viable fetus in the context of fetal demise. Ex. 1, Hinkle Suppl. Decl. ¶¶ 11–12; Ex. 2, Burkhart Suppl. Decl. ¶ 18. In other words, House Bill 164 discriminates against abortion care providers by singling them out for differential and unfavorable treatment compared to all other health care providers. As a result, abortion providers may be penalized for providing care that they are trained and qualified to

provide and that is otherwise within their scope of practice, solely because it is abortion care (or because is the statute does not make clear whether the treatment qualifies as "abortion" care). This discrimination is made plain by the fact that House Bill 164 authorizes providers to prescribe the ***same*** medications utilized for medication abortion for other, non-abortion purposes.

In further violation of the Wyoming Constitution's equal protection clauses, Section 402(b)(iii) inappropriately discriminates against Plaintiffs and Wyoming physicians by creating a greater risk of professional discipline for prescribing medications intended to induce abortion without any legitimate health related justification. Specifically, Section 402(b)(iii) burdens and impedes Plaintiffs Hinkle, Anthony, and Wellspring from assisting their patients in obtaining medication abortion and threatens them with a loss of their professional license for doing so. Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2, Burkhart Suppl. Decl. ¶ 12; Ex. 7, Anthony Decl. ¶ 66. The risks associated with a potential loss of professional license forces Plaintiffs and other Wyoming health care providers to turn away patients they otherwise would assist and to deny those patients time-sensitive care. Ex. 2, Burkhart Suppl. Decl. ¶ 13; Ex. 3, Nouhavandi Suppl. Decl. ¶ 13. Under any level of scrutiny, Section 402(b)(iii) fails review because it bears no rational relationship to any compelling or legitimate purpose, and, consequently, the classifications created by the statute do not further any compelling or legitimate purpose. House Bill 164 is silent as to how the exception for medications "[i]ntended to induce an abortion" is related to any such interest. To the contrary, singling out physicians who provide evidence-based, accepted medication abortion from protections afforded to all other physicians actively undermines women's health care. *Supra* Argument, Section I. In nearly all other instances of off-label medication use, House Bill 164 actively protects physicians. This discriminatory treatment is unconstitutional, because the state has no per se legitimate interest in treating abortion providers differently from other similarly situated medical providers.

Even if the State could show that Section 402(b)(iii) furthers a compelling interest to protect physicians and their patients, and to justify its differential treatment between abortion providers and other physicians, it must also show that the law is neither overinclusive nor "fatally underinclusive." *In re Neely*, 2017 WY 25, ¶ 29, 390 P.3d 728, 738–39 (Wyo. 2017) (referencing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993)). House Bill 164 is not "narrowly tailored" to the State's stated purposes. Indeed, if the law was designed to protect patients from taking certain medications because they are dangerous for off-label indication, then the law would extend to ***all*** off-label uses of those medications, not just those "[i]ntended to induce an abortion." Yet Section 402(b)(iii) expressly permits use of abortion medications for off-label uses unrelated to abortion, of which there are many.

In other words, Section 402(b)(iii) is neither "narrow enough in scope [nor] grounded in sufficient factual context for [the court] to ascertain some relation between the classification and the purpose it serve[s]." *Romer v. Evans*, 517 U.S. 620, 632–33 (1996). Section 402(b)(iii) "underinclusiveness undermines the [State's] claim of narrow tailoring" and therefore violates equal protection. *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1268–69 (10th Cir. 2008) (holding 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 the State only excluded certain religious institutions); *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1278–79 (10th Cir. 2024) (finding state's policy was "underinclusive" and therefore not "narrowly tailored" when the policy granted exemptions to a COVID-19 vaccine policy to some religions but not others).

Here, the lack of any rational basis for House Bill 164's abortion exception indicates that the State has an impermissible and discriminatory motivation. Indeed, House Bill 164's abortion

exception "is so discontinuous with the reasons offered for it that [it] seems inexplicable by anything but animus toward the class it affects," *Romer*, 517 U.S. at 632—i.e., abortion service providers and their patients.

II. WITHOUT A PRELIMINARY INJUNCTION, HOUSE BILL 164 WILL CAUSE IRREPARABLE HARM TO PLAINTIFFS, THEIR PATIENTS, THEIR CLIENTS, AND OTHER WYOMINGITES.

An injunction is appropriate when a threatened harm is irreparable and there is no adequate remedy at law. *Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 36, 395 P.3d 167, 177 (Wyo. 2017). "[T]he infringement of a constitutional right [is] enough" to show irreparable harm and "no further showing of irreparable injury" is required. *Free the Nipple-Fort Collins v. City of Fort Collins*, *Colo.*, 916 F.3d 792, 805 (10th Cir. 2019); *see also 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); *see also Johnson II*, SJ Order ¶ 75. Thus, Plaintiffs and their patients will suffer irreparable harm stemming from the violation of their constitutional rights, particularly the patent violation of the rights of Wyoming women to make their own health care decisions under Section 38, the right of their physicians to assist them in effectuating those decisions, and the right of their physicians to equal protection under the law.

As this Court has already held, Plaintiffs in this action have standing to challenge Wyoming laws that prohibit or severely limit access to abortion care. Plaintiff 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. 10, Johnson Decl. ¶¶ 1, 5, 10, 12–13, 16–18. Plaintiff Dr. Anthony is an OB/GYN physician licensed and practicing in

Wyoming who will be placed in the untenable position of choosing between providing critical care in a demonstrably inferior way or ceasing to provide that care. Critically, she may be unable to prevent the irreparable harms of forced pregnancy and parenting to Wyoming women. Ex. 7, Anthony Decl. ¶ 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. 4, Hinkle Decl. ¶¶ 67–69. Plaintiff Wellspring is an organization that provides critical medical care to pregnant women in Wyoming, including medication abortions beyond 70 days' gestation, and will be unable to provide such care if Section 402(b)(iii) is in effect. Wellspring also may be unable to provide the best evidence-based medical care to some pregnant patients seeking procedural abortion care, and other patients may be impacted by reduced access to abortion medications. Ex. 2, Burkhart Suppl. Decl. ¶¶ 3, 8, 12; Ex. 5, Burkhart Decl. ¶ 8. 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. 9, Lichtenfels Decl. ¶¶ 21–22. Patients of Plaintiffs Wellspring, Dr. Hinkle, and Dr. Anthony will be irreparably harmed because, in addition to depriving them of their constitutional rights, House Bill 164 will likely threaten their health. Ex. 1, Hinkle Suppl. Decl. ¶¶ 18–19; Ex. 2, Burkhart Suppl. Decl. ¶ 16; Ex. 7, Anthony Decl. ¶ 4.

Plaintiff physicians, as well as Chelsea's Fund and Wellspring, have standing to represent the interests of Wyoming women seeking abortion care. PI Order at 5; *see also 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 (2022) ("We have long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations."). Plaintiff Johnson also has standing to represent her interest in seeking abortion care. PI Order at

5 ("[T]he argument that an individual woman, who is not currently pregnant, holds only a theoretical right, is not only unworkable but defies logic.").

Section 402(b)(iii) will irreparably harm Plaintiffs and Wyomingites by severely limiting access to medication abortion services in Wyoming. Ex. 1, Hinkle Suppl. Decl. ¶19. Plaintiffs and Wyomingites will also suffer from delays in care and increased financial burden because of Section 402(b)(iii). *Id.*; *see also* Ex. 2, Burkhart Suppl. Decl. ¶ 16. Finally, this statutory exception will irreparably harm Plaintiffs Drs. Hinkle and Anthony, Wellspring, and their staff because of the real and substantial risk of adverse professional consequences for providing abortion medication for off-label use. Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2, Burkhart Suppl. Decl. ¶ 12; Ex. 7, Anthony Decl. ¶ 66. If a preliminary injunction is not entered by this Court, Section 33-1-402(b)(iii) will detrimentally impact the lives of Plaintiffs, their patients, and many other Wyomingites.

A. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from Limited Access to Abortion Medication in Wyoming.

The direct impact of Section 402(b)(iii) is to make medication abortion significantly less accessible, if not impossible to access in Wyoming. *See supra* Statement of Facts, Section III (explaining that, in light of the uncertainty surrounding the new rules Wyoming's health related licensing boards have been instructed to promulgate, and to avoid facing professional repercussions, physicians and pharmacists may refuse to dispense abortion medications); *see also* Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2, Burkhart Suppl. Decl. ¶¶ 13–14; Ex. 3, Nouhavandi Suppl. Decl. ¶ 13; Ex. 4, Hinkle Decl. ¶ 68; Ex. 7, Anthony Decl. ¶ 38. Refusal to dispense abortion medications would, in turn lead to the prevention of all medication abortions within the state. Plaintiffs anticipate that health care providers across the state will be significantly less likely to prescribe medications to terminate or assist with terminating a pregnancy, including ones that may be necessary to protect their patients' health or lives. Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2,

Burkhart Suppl. Decl. ¶ 13. Relatedly, because pharmacists are typically unable to confirm whether a prescription for abortion medications is "[i]ntended to induce an abortion," pharmacists may be less willing to dispense abortion medications even for procedures that are ***not*** intended to induce an abortion. Ex. 2, Burkhart Suppl. Decl. ¶ 14; Ex. 3, Nouhavandi Suppl. Decl. ¶ 12. As a result, Plaintiffs will likely experience challenges in staffing their clinics with health care providers and in accessing abortion medications from pharmacies, potentially resulting in the loss of patient relationships and an overall decline in access to abortion care for women in Wyoming. Ex. 2, Burkhart Suppl. Decl. ¶ 13. And patients may also be harmed by their inability to access these medications for a variety of conditions and for routine gynecological procedures. Ex. 4, Hinkle Decl. ¶ 28; Ex. 1, Hinkle Suppl. Decl. ¶ 11. For example, without easy access to mifepristone or misoprostol, it will be more difficult for Plaintiff Wellspring and other health care providers in the state to offer services like intrauterine device insertion (or will make it more painful for patients to receive). Ex. 1, Hinkle Suppl. Decl. ¶ 11; Ex. 2, Burkhart Suppl. Decl. ¶ 15.

The inability to access abortion medications may compel many Wyomingites seeking abortion care to carry pregnancies to term against their will with all the physical, emotional, and financial costs that entails. *See* Ex. 4, Hinkle Decl. ¶¶ 11, 49–63; Ex. 7, Anthony Decl. ¶¶ 53–58; Ex. 10, Johnson Decl. ¶ 15. 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. 4, Hinkle Decl. ¶¶ 11, 49–63; Ex. 7, Anthony Decl. ¶¶ 53–58; Ex. 10, Johnson Decl. ¶¶ 14–16.

Experiencing forced pregnancy and parenting can have severe consequences for Wyomingites. Not only does pregnancy carry risks to women's health and can exacerbate preexisting medical and mental health conditions, but labor and childbirth are themselves significant medical events with many risks. Ex. 7, Anthony Decl. ¶¶ 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. Even in an uncomplicated pregnancy, an individual experiences a wide range of physiological challenges. Ex. 4, Hinkle Decl. ¶ 50; Ex. 7, Anthony Decl ¶¶ 9, 53, n.33.

Labor and childbirth are also significant medical events with many risks. Ex. 4, Hinkle Decl. ¶ 54; Ex. 7, Anthony Decl. ¶ 56. The risk of mortality from pregnancy and childbirth is over twelve times greater than that of legal pre-viability abortion. Ex. 7, Anthony Decl. ¶ 56; *see also* Ex. 4, Hinkle Decl. ¶ 54. Section 402(b)(iii) will require many pregnant individuals to face and endure these risks—an irreparable injury that only an injunction can prevent.

B. Plaintiffs and Wyomingites Will Suffer Irreparable Harm from Delayed Care, Increased Financial Burdens, and Cruel Treatment.

Although some women may be able to access abortion services, Section 402(b)(iii) will also force some women to suffer irreparable injury from the delay of care, increased financial burden, and/or cruel treatment from the disruption in routine health care that relies on the administration of these medications.

For instance, some patients who are unable to access medication abortion services will be forced to have procedural abortions, which are more intrusive and expensive. Ex. 2, Burkhart Suppl. Decl. ¶ 8. In addition, without the benefit of medications that make procedural abortions more comfortable and easier to administer to patients, procedural abortions will be more burdensome and painful for the patient. Ex. 1, Hinkle Suppl. Decl. ¶ 12; Ex. 2, Burkhart Suppl. Decl. ¶ 12. This puts physicians in the untenable position of choosing between providing critical care in this inferior way or ceasing to provide that care all-together. *Id*.

In addition, because Wellspring is the only procedural abortion provider in the state, this increases patients' travel time and costs—or will require patients to travel outside of the state—to obtain an abortion. Those who will have to travel out-of-state for care will likely receive care later

in their pregnancies than if they otherwise had access to abortion in Wyoming. Ex. 7, Anthony Decl. ¶ 61; Ex. 9, Lichtenfels Decl. ¶¶ 18–19. At this time, the nearest clinics providing abortion outside of Wyoming are hundreds of miles away. Ex. 7, Anthony Decl. ¶ 60; Ex. 9, Lichtenfels Decl. ¶¶ 18–19. Some Wyomingites may also be forced to compromise the confidentiality of their decision to have an abortion to obtain transportation or childcare. Ex. 7, Anthony Decl. ¶ 61; Ex. 8, Amaon Decl. ¶ 13; Ex. 9, Lichtenfels Decl. ¶ 18.

Because House Bill 164 also lacks any definition of "abortion" or what it means to "[i]ntend[ ] to induce" an abortion, Wyo. Stat. Ann. § 33-1-402(b)(iii), some health care providers will reasonably hesitate before prescribing or administering medications ***even when*** such medications are used for something else entirely, like miscarriage management. Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 2, Burkhart Suppl. Decl. ¶ 14; Ex. 1, Nouhavandi Suppl. Decl. ¶ 13. As a result, women with pregnancy complications (unrelated to abortion) will continue to experience delays and potentially the denial of critical health care. Ex. 1, Hinkle Suppl. Decl. ¶ 18. This will irreparably harm Plaintiffs Anthony, Hinkle, and Wellspring that administer these medications in the care of patients, Ex. 7, Anthony Decl. ¶¶ 3, 6, 38; Ex. 4, Hinkle Decl. ¶ 9; Ex. 2, Burkhart Supp. Decl. ¶¶ 12, 14; Plaintiff Johnson, who may need to access this medication for her own care, Ex. 10, Johnson Decl. ¶ 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. 9, Lichtenfels Decl. ¶¶ 21–22.

Finally, as a result of Section 402(b)(iii) patients have lost 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." *Id*. (citation omitted); *accord Harris v. Bd. of Supervisors*, *L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004).

C. Plaintiffs Will Suffer Irreparable Harm from Professional Investigation and Serious Risk of Loss of Licensure

House Bill 164 does not protect providers of off-label abortion medication, including Plaintiffs Drs. Anthony and Hinkle, Wellspring, and their respective staff from professional consequences, and instead creates a serious risk of these consequences, including disciplinary action and loss of licensure. Losing the ability to practice medicine is undoubtedly an irreparable harm to Plaintiffs and other physicians. *Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc.*, 805 F.2d 351, 356 (10th Cir. 1986) (explaining "[a] threat to trade or business viability may constitute irreparable harm"); *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 304 F. Supp. 2d 1278, 1287 (D. Wyo. 2004) ("Loss of customers, loss of goodwill, and threats to a business' viability can constitute irreparable harm.") (citation omitted).

Under House Bill 164, "a prescriber or pharmacist shall not face any adverse action from a health related licensing board, including disciplinary action" for dispensing nearly all off-label indicated medications. Wyo. Stat. Ann. § 33-1-403(a). Additionally, "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." *Id.* § 33-1-403(b). These provisions create a zone of protection for providers who dispense nearly all off-label medications, except, of course, those who administer abortion medication off-label when "[i]ntended to induce an abortion." *Id.* § 33-1-402(b)(iii).

For the providers that are ***not*** shielded by the protections of the statute, including Plaintiffs, "adverse action" from a licensing board, including the risk of professional investigation and loss of licensure, is a real and substantial risk. This is because Wyoming health related licensing boards

are also tasked with promulgating rules to implement House Bill 164, *id.* § 33-1-403, Section 2, which could happen as soon as the law goes into effect on July 1, 2025, or whenever the respective boards so chose. Ex. 1, Burkhart Suppl. Decl. ¶ 3. A violation under the Wyoming Medical Practice Act plainly provides that violating a promulgated rule may result in a loss of licensure or other disciplinary action. Wyo. Stat. Ann. § 33-26-402(a)(xxxi) (providing grounds for suspension, revocation, and restriction of licensure and "other disciplinary action" for a "[v]iolation of any board rule or regulation"). Under House Bill 164, disciplinary action includes revocation, suspension, or denial of a license, "or any other disciplinary action." Wyo. Stat. Ann. § 33-1-401(a)(i). And under Wyoming's Professions and Occupations Regulations for Physicians and Surgeons, the risks associated with professional investigation for potential misconduct are not just limited to loss of licensure. *See* Wyo. Stat. Ann. § 33-26-405. If an investigation results in the loss of licensure for a physician, Wyoming law also authorizes imposition of a civil fine of $25,000, in addition to forcing the physician to cover "all of the cost of the proceeding." *Id*. § 33-26-405(a)(iv), (viii). Pharmacists and nurses are also subject to risks of adverse professional consequences. *See* Wyo. Stat. Ann. § 33-24-122 (providing for revocation or suspension of a pharmacist's license and administrative penalty up to $2,000 for violating rules or regulations promulgated by the board), § 33-21-146–147 (providing for disciplinary proceedings for nurses).

As a result of these risks, Drs. Anthony and Hinkle and Wellspring's staff will be forced to make the impossible decision between potentially risking losing their medical licenses (which will impact their ability to practice all forms of medicine, including abortion services), or provide care that is inconsistent with the best available evidence. Ex. 1, Hinkle Suppl. Decl. ¶ 18; Ex. 7, Anthony Decl. ¶ 66; see also Ex. 2, Burkhart Suppl. Decl. ¶ 12. If one of Dr. Anthony's patients desires medication abortion care, Dr. Anthony may face disciplinary action by the Wyoming Board of Medicine if she prescribes or administers medication in a manner inconsistent with the labels

for mifepristone or misoprostol. Ex. 7, Anthony Decl. ¶ 66. If one of Dr. Hinkle's patients presents with a missed miscarriage, Dr. Hinkle would be unsure whether she will have the protections of House Bill 164 if she prescribes misoprostol to expel any remaining fetal tissue, since it is unclear whether such treatment is considered an off-label use "[i]ntended to induce abortion." Ex. 1, Hinkle Suppl. Decl. ¶ 15. Critically, the lack of definition for "abortion" or medications that "induce abortion" means that Drs. Anthony and Hinkle will face situations—including ectopic pregnancies, instances of fetal demise and sepsis, and other life-threatening health conditions—where they are forced to accept the risk of professional disciplinary action to save the life of their patients. *See* Ex. 7, Anthony Decl. ¶¶ 41–46 (describing medical conditions that require termination of pregnancy to save the life of the patient). As explained by Dr. Anthony, creating limitations on physicians that diminish the quality of patient care "is contrary to recommendations by the American College of Obstetrics and Gynecology, the American Medical Association, and a myriad of other entities that support evidence-based health care. It also destroys any effort to provide ethical, sound care in the best interests of the patient." *Id.* ¶ 47.

The risk of disciplinary action and potential loss of a professional license will make it more challenging for Plaintiff Wellspring to keep and recruit health care providers to staff the clinic—which is already difficult in the state of Wyoming. Ex. 2, Burkhart Suppl. Decl. ¶ 13; Ex. 7, Anthony Decl. ¶ 62 ("Wyoming already has a major shortage of obstetrician/gynecologists."). As a result, Section 402(b)(iii) will likely impact Wellspring's ability to run its business and attract quality and high-level talent. Ex. 2, Burkhart Suppl. Decl. ¶ 13. If patients are unable to access the best quality care at Wellspring, this will likely further result in negative impacts to Wellspring's operation, costs, and viability of its business. *Id.* ¶ 14.

As a result, these Plaintiffs will suffer harms that cannot possibly be compensated and that could bar them from practicing medicine anywhere in the country. Ex. 1, Hinkle Suppl. Decl.

¶ 20. These harms can only be avoided through issuance of the requested TRO and preliminary injunction.

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

Plaintiffs and their patients will face far greater harm if House Bill 164 is in effect than Defendants will face if the Court preserves the status quo. The State has no "interest in enforcing a law that is likely constitutionally infirm." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). In addition, the public has an interest in a speedy injunction to block a law that fundamentally upsets the longstanding status quo on which Wyoming women and their families have relied for nearly five decades. The purpose of a preliminary injunction is "to preserve the status quo until the merits of an action can be determined." *CBM Geosolutions*, 2009 WY ¶ 7, 215 P.3d at 1057 (quoting *Weiss v. State ex rel. Danigan*, 434 P.2d 761, 762 (Wyo. 1967)). Here, the status quo is that Wyoming women can obtain a lawful abortion pursuant to Wyo. Stat. Ann. § 35-6-102(a) and have been able to do so pursuant to that statute since 1977. The balance of equities and public interest thus weighs decisively in Plaintiffs' favor, further demonstrating that a temporary restraining order is appropriate.

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

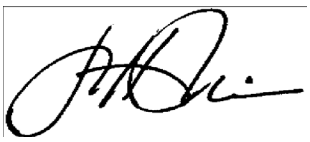
Under the Wyoming Rules of Civil Procedure 65(c), "if the district court finds no likelihood of harm to the defendant, no bond is necessary." *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶ 98, 275 P.3d 438, 466 (Wyo. 2012). Indeed, this Court has already found that there is "no likelihood of harm" to Defendants, therefore "no bond is necessary and none will be required." PI Order at 9. Plaintiffs request that this Court again use its discretion to waive the security requirement. The relief sought still results in no monetary loss for Defendants and is necessary to protect the constitutional rights of Plaintiffs, their patients, and women in Wyoming.

CONCLUSION

Because House Bill 164 violates longstanding constitutional rights of Wyomingites to make health care decisions and to equal protection under the law, and because Plaintiffs will suffer irreparable injury if the laws are enforced, the Court should enter a preliminary injunction enjoining enforcement of Section 402(b)(iii) of House Bill 164, both facially and as applied to the Plaintiffs.

WHEREFORE, Plaintiffs request entry of a preliminary injunction enjoining Defendants from enforcement of House Bill 164 pending trial in this matter.

RESPECTFULLY SUBMITTED this 4th day of June 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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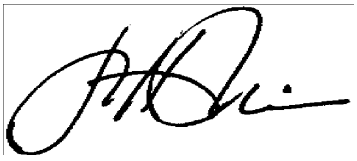

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