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CLERK OF DISTRICT COURT

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
IN AND FOR TETON COUNTY, WYOMING**

DANIELLE JOHNSON;)
KATHLEEN DOW;)
GIOVANNINA ANTHONY, M.D.;)
RENE R. HINKLE, M.D.;)
CHELSEA’S FUND; and)
CIRCLE OF HOPE HEALTHCARE)
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;)
MATTHEW CARR, Sheriff Teton County,)
Wyoming; and)
MICHELLE WEBER, Chief of Police, Town of)
Jackson, Wyoming,)
)
Defendants.)

Case No. 18853

**AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

PLAINTIFFS, Danielle Johnson, Kathleen Dow, Giovannina Anthony, M.D., Rene Hinkle, M.D., Chelsea’s Fund, and Circle of Hope Health Care Services, by and through undersigned counsel, bring this Complaint for Declaratory Judgment pursuant to Wyo. R. Civ. P. 57 and the Uniform Declaratory Judgments Act, Wyo. Stat. §§1-37-101 *et seq.* (2011); and for Injunctive Relief pursuant to Wyo. R. Civ. P. 65 & Wyo. Stat. §§ 1-28-101 *et seq.* (1977). The Plaintiffs seek a declaration from the Court that Wyoming House Bill 152 (“HB 152”), expected to be codified at Wyo. Stat. §§ 35-6-120 through 35-6-138 (hereinafter Wyo. Stat. § 36-6-120 *et seq.* or “Wyoming’s Criminal Abortion Ban”) violates the Wyoming Constitution. Plaintiffs also seek a declaration from the Court that Wyoming Senate File Number 109 (“SFN 109”), expected to be codified at Wyo. Stat. §§ 35-6-101 through 35-6-120 (hereinafter Wyo. Stat. § 35-6-101 *et seq.* or “Wyoming’s Criminal Medication Ban”) violates the Wyoming Constitution. The Plaintiffs also seek injunctive relief to prevent Wyoming’s Criminal Abortion Ban and Wyoming’s Criminal Medication Ban from taking effect and/or being enforced during the pendency of this action.¹

For their Complaint, the Plaintiffs state and allege as follows:

INTRODUCTION

1. Wyomingites have historically relied on the right to be left alone by the government – especially when it comes to their private affairs such as family composition and decisions about their private health care – fundamental rights guaranteed by the Wyoming Constitution.

2. Such historical reliance has been well-settled since, at least, the constitutional convention of 1889, but more likely since Wyoming’s days as a territory.

¹ HB 152 and SFN 109 both purport to adopt new and different provisions codified at Wyo. Stat. § 35-6-120.

3. As a frontier territory, Wyoming was progressive in providing expansive civil rights for its citizens, including giving women the right to vote and hold office, the first time in history that women were legally given such rights. Such progressive liberty protections were present in the constitutional convention, and transposed into Wyoming's Constitution.

4. At Wyoming's constitutional convention, the debates evidenced that the delegates were determined to limit legislative power, and have a strong declaration of individual rights.

5. In addition to women's suffrage, the Declaration of Rights included equal protection guarantees prohibiting race, sex, and other forms of discrimination, extensive due process protections, and multiple protections ensuring church-state separation.²

6. The Declaration of Rights (Article 1 of the Constitution) reflected the convention delegates' mistrust of the legislative process, preferring to rely on specific constitutional provisions to constrain future legislatures. Thus, in contrast to the ten federal Bill of Rights amendments, the Declaration of Rights contains thirty-nine separate provisions that enumerate an array of individual rights, several of which are without counterpart in the U.S. Constitution.³

7. During debates over the Declaration of Rights, Laramie County delegate Henry Hay, offered an amendment that would have provided: "[t]he provisions of this clause [the Declaration of Rights] are mandatory unless by express words they are qualified or declared to be otherwise." Hay's proposal was immediately challenged by delegate George Smith, a Rawlins attorney, who asserted that the amendment "would demand a strict construction of these matters instead of a liberal one, as intended;" and, Hay withdrew his amendment.

² Although the Fourteenth Amendment to the U.S. Constitution had passed in 1868, it was not applicable to the states. Thus, if Wyoming's citizens were to enjoy individual constitutional rights at the time of statehood, those rights had to be elaborated in the state constitution and enforced by the state courts.

³ Additionally, the Wyoming Constitution contains more than three times the number of words than does the United States Constitution.

8. The Declaration of Rights was adopted without rancorous debate.

9. The constitutional convention delegates debated the structure of the state's judiciary, with specific debate concerning whether Wyoming should have an independent supreme court to keep a check on the legislature, and its cost. Delegate George Smith observed, "what is the matter of a few thousand dollars compared with the rights of life and liberty." Delegate Anthony Campbell opined that "[p]roperty is dear to a man, but his life and liberty are dearer." And, delegate John Riner argued, "if we are to sacrifice principle and lay aside everything but the question of policy, then let us adjourn tonight and go home."

10. Opponents of the independent supreme court lost three separate votes, and the convention delegates adopted an independent supreme court, as a guardian of individual rights, a faith that was not reflected in the convention's view of legislative or executive power.

11. Upon receiving the proposed constitution, Territorial Governor Warren called a special election for November 5, 1889 for ratification. The voters approved it by a vote of 6,272 to 1,923.

12. In Congress, Democrats fought the Wyoming statehood bill, specifically citing the territory's equal suffrage provision as a basis for their opposition; but the bill passed, and President Harrison signed it on July 10, 1890, establishing Wyoming as the nation's forty-fourth state.

13. When unique state constitution provisions are at issue, the Wyoming Supreme Court has long pursued its own path to give meaning to these provisions, finding that federal precedent is rarely helpful, and endorsing the proposition that the constitution is an evolutionary document that must accommodate social and economic change.

14. Amendments to the Wyoming Constitution have responded to the perceived necessities of the time, continuing a tradition of pragmatic and progressive constitutionalism that

emerged from the Constitution. Yet, the Declaration of Rights has been amended just five times in the state's history, and none of the amendments significantly altered the individual rights established in the original constitution.

15. In 2012, the Wyoming voters overwhelmingly passed a Constitutional Amendment⁴ entitled “Right of health care access.” Wyo. Const. art. 1, § 38. Article 1, sec. 38 states (in part): “[e]ach competent adult shall have the right to make his or her own health care decisions;” and “[t]he state of Wyoming shall act to preserve these rights from *undue* governmental infringement.” *Id.* (emphasis added).

16. At the time of the vote on the “Right of health care access” amendment, abortion health care was legal prior to viability of the fetus.

17. In 2022, the Wyoming Legislature passed an amendment to Wyoming abortion laws, proposing to enact Wyo. Stat. § 35-6-102(b), prohibiting abortion. This statute was a “trigger” law, signed into law by Defendant Governor Mark Gordan just prior to the United States Supreme Court decision in *Dobbs v. Jackson Women’s Health Care Organization*. The law was set to go into effect on July 27, 2022.

18. On July 25, 2022, these same Plaintiffs filed a prequel action to the present matter, against the same Defendants. *Johnson et al v. State of Wyoming et al*, Civil Action No. 18732 (“Johnson I”).⁵

19. The complaint and initial filings in Johnson I sought preliminary and permanent injunction of the trigger ban, and a declaration that the trigger ban was contrary to the Wyoming

⁴ The Amendment, voted on in the general election on November 6, 2012, passed 72.59% to 21.70% (181,984 to 54,405). [https://ballotpedia.org/Wyoming_Healthcare_Amendment,_Constitutional_Amendment_A_\(2012\)](https://ballotpedia.org/Wyoming_Healthcare_Amendment,_Constitutional_Amendment_A_(2012)).

⁵ Plaintiffs will refer to the previous litigation as “Johnson I,” “Wyoming’s Trigger Ban,” the “trigger ban” or the “trigger ban case.”

Constitution. This Court granted first a Temporary Restraining Order on July 28, 2022, (written order⁶) and a subsequent Preliminary Injunction on August 10, 2022.

20. In the wake of this Court’s actions in the trigger ban case, Wyoming’s long-enacted abortion statute was in effect. This statute allowed pre-viability abortions in any case, and all abortions when necessary to protect the life or health of the pregnant woman according to appropriate medical judgment. Wyo. Stat. § 35-6-102(a) (1977). This remains the status quo upon the filing of the action at bar.

21. Recognizing that its first attempt to ban abortion was an unconstitutional and fatally flawed statute, and that Plaintiffs had successfully stopped the trigger ban from going into effect, the Wyoming Legislature passed a second ban during the 2023 legislative session – HB152.⁷

22. At the same time it enacted HB 152, the legislature also passed SF 109, a statute purporting to ban the use of medication for an abortion, subject to certain limited exceptions that are different from the exceptions in HB 152.

23. HB152 and SF 109, like the trigger ban, are unconstitutional intrusions into Wyomingites’ privacy and fundamental Constitutional rights – rights of religious freedom, to make health care decisions, to self-determined family composition, and equal protection under the laws, among many others. They are also unconstitutionally vague in that it is impossible to determine when the exceptions in the statutes apply. If the newly approved and enacted Criminal Abortion Ban and Criminal Medication Ban are allowed to go into effect, the fundamental rights of

⁶ This Court issued its initial ruling on the record on July 27, 2022, and made the temporary restraining order effective as of 12:00pm on July 27, 2022.

⁷ In Johnson I, in Court filings and on the record, Plaintiffs referred to the trigger ban as “Wyoming’s Criminal Abortion Ban.” Because the 2023 statute supersedes and repeals the 2022 trigger ban, references throughout this Complaint to “Wyoming’s Criminal Abortion Ban,” and moving forward in this case, are to the latest Criminal Abortion Ban – HB152.

Wyoming women⁸ and their families will be taken away by the state government and those rights will cease to exist.

24. On or about March 17, 2023, Defendant Governor Mark Gordon signed SF 109 and allowed HB 152 to take effect without his signature. By its terms, SF 109 will take effect on July 1, 2023. However, because HB 152 took effect on or about March 18, 2023, women who have sought abortions after that date have been unable to access this essential medical care, continuing to the present.

25. The Criminal Abortion Ban prohibits abortion in Wyoming with limited, vague, and unworkable exceptions (anticipated codification as Wyo. Stat. §§ 35-6-120 *et seq.*).

26. Wyoming's Criminal Abortion Ban states that the legislature "finds":

- a. Fetuses are humans from "conception", and are thus members of the human race under art. 1 § 2 of the Wyoming Constitution;
- b. Fetuses are endowed by their "creator" with certain unalienable rights, the foremost of which is the right to life, which is protected by art. 1 § 6 of the Wyoming Constitution;
- c. Abortion is not "health care";
- d. It is within the authority of the state of Wyoming to prohibit abortion;
- e. Wyoming's legitimate interests include preservation of prenatal life at all stages of development, protection of maternal health and safety, elimination of particularly gruesome or barbaric medical procedures; the preservation of the

⁸ Reference to "woman" or "women" are meant as shorthand for people who are or may become pregnant. However, people with other gender identities, including transgender men, agender, and gender-diverse individuals, may also become pregnant and seek abortion services.

integrity of the medical profession; the mitigation of fetal pain, and prevention of discrimination on the basis of race, sex, or disability. Wyo. Stat. § 35-6-121.

27. Wyoming’s Criminal Abortion Ban defines illegal “abortion” to mean using or prescribing any instrument or medicine to intentionally terminate the “clinically diagnosable pregnancy of a woman,” including “elimination of one or more unborn babies in a multifetal pregnancy.” Wyo. Stat. § 35-6-122(a)(i).

28. The Criminal Abortion Ban’s definition of “abortion” excludes using or prescribing any instrument, medicine, drug or any other substance, device or means if “done with the intent to:”

- a. Save the life or preserve the health of the unborn baby;
- b. Remove a dead unborn baby caused by spontaneous abortion or intrauterine fetal demise;
- c. Treat a woman for an ectopic pregnancy⁹;
- d. Treat a woman for cancer or another disease that requires medical treatment which treatment may be fatal or harmful to the unborn baby.

29. Wyoming’s Criminal Abortion Ban makes all abortions illegal which are not carved out by these exclusions or by certain statutory exceptions.

30. Other exceptions elsewhere in the Act allow “pre-viability” abortions if, based upon a physician’s “reasonable medical judgment”¹⁰ an abortion is “necessary”¹¹ to prevent:

⁹ As defined by the legislature in Wyoming’s Criminal Abortion Ban, “[e]ctopic pregnancy’ means a pregnancy that occurs when a fertilized egg implants and grows outside the main cavity of the uterus.” Wyo. Stat. § 35-6-122. This is not an accurate or complete medical definition.

¹⁰ As defined by the legislature in Wyoming’s Criminal Abortion Ban, “[r]easonable medical judgment’ means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.” Wyo. Stat. § 35-6-122.

¹¹ As defined by the legislature in Wyoming’s Criminal Abortion Ban, “Necessary” means the “physician makes all reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of the unborn baby in a manner consistent with reasonable medical judgment.” Wyo. Stat. § 35-6-124.

- a. the death of a pregnant woman;
- b. the substantial risk of death for the pregnant woman because of a physical condition;
- c. the substantial risk of death for the pregnant woman because of the serious and permanent impairment of a life-sustaining organ. Wyo. Stat. § 35-6-124.¹²

31. The Act’s exceptions include “accidental or unintentional” injury to, or death of, a fetus occurring while a physician provides medical treatment to a pregnant woman. *Id.*

32. The exceptions include an “abortion on a woman when the pregnancy is a result of incest . . . or sexual assault”, provided that the woman (or her parent/guardian) “shall report the act of incest or sexual assault to a law enforcement agency and a copy of the report shall be provided to the physician.” *Id.*

33. The exceptions include an abortion performed “on a woman when in the physician’s reasonable medical judgment, there is a substantial likelihood that the unborn baby has a lethal fetal anomaly¹³ or the pregnancy is determined to be a molar pregnancy¹⁴.”

34. The exceptions referenced in the preceding paragraphs (§§ 28, 30-33) involve abortion-related health care and are undeniably for “health care services,” exposing the flaw of the legislature’s attempt to re-define health care in the present legislation.

¹² It is unclear how the statute would apply if a physician is faced with one of these scenarios post-viability but at a time of gestation where delivery of the fetus would still constitute a substantial risk to the fetus.

¹³ As defined by the legislature in Wyoming’s Criminal Abortion Ban, “‘Lethal fetal anomaly’ means a fetal condition diagnosed before birth and if the pregnancy results in a live birth there is a substantial likelihood of death of the child within hours of the child’s birth.” Wyo. Stat. §35-6-122 (emphasis added). This is not an accurate or complete medical definition.

¹⁴ As defined by the legislature in Wyoming’s Criminal Abortion Ban, “‘Molar pregnancy’ means the development of a tumor or cysts that may or may not include placental tissue from trophoblastic cells after fertilization of an egg that results in spontaneous abortion or intrauterine fetal demise.” Wyo. Stat. § 35-6-122. This is not an accurate or complete medical definition.

35. The Criminal Medication Ban provides that “it shall be unlawful to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person.” Wyo. Stat. § 35-6-120(a).

36. The Criminal Medication Ban includes certain exceptions that are narrower than the exceptions in the Criminal Abortion Ban. For example, the Criminal Medication Ban does not include exceptions for molar pregnancy, ectopic pregnancy or lethal fetal anomalies. As a result, some abortions that may be permitted under the Criminal Abortion Ban will still be subject to the Criminal Medication Ban, with the result that the law will require women to obtain, and physicians to perform, such legal abortions through a surgical procedure as opposed to through medication, regardless of whether medication is the medically superior abortion method in a particular case. In some cases, this may result in a woman having to wait longer for an abortion or being denied an abortion.

37. The Criminal Medication Ban includes an exception for sexual assault and incest, but provides no guidance for how a health care provider or other person should determine whether a pregnancy resulted from a sexual assault or incest. As a result, it is impossible for a health care provider or other person to know if a pregnancy qualifies for these exceptions.

38. The Criminal Medication Ban provides an exception for the “sale, use, prescription or administration of any contraceptive agent administered before conception or before pregnancy can be confirmed through conventional medical testing.” Wyo. Stat. § 35-6-120(b)(i). It is not clear whether this exemption might be interpreted by prosecutors to apply to certain forms of birth control. As a result, women and health care providers may not be able to determine whether certain forms of birth control are legally permissible under the Ban.

39. The Criminal Medication Ban refers to “natural miscarriage” and “chemical abortion.” These terms are not medical terms and have no medical definition. As such, it is unclear to what they refer. This lack of clarity makes it impossible to know to what conduct the Ban applies.

40. The Criminal Medication Ban allows use of abortion medication for “[t]reatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment.” Wyo Stat. § 35-6-120(b)(iii). The terms “necessary to preserve,” “imminent peril,” and “substantially endangers” are not medical terms and have no medical meaning, such that it is impossible for a physician to determine when this exception applies.

41. This exception also expressly excludes from “imminent peril” a psychological or emotional condition and also expressly includes conditions that will result in suicide or self-harm. Thus, on its face, the statute does not permit a medication abortion where it is necessary to prevent the death of a woman from suicide or serious injury of a woman from psychological or emotional conditions.

42. In the absence of legal elective abortion in Wyoming, all women in the state who want an abortion or who seek health care related to abortion services will face a government-mandated trilemma: carry a pregnancy to term against their will; remain pregnant until they have the resources (if possible) and conditions allow to travel out of state to access critical, time-sensitive abortion health care; or attempt to self-manage their abortions outside the medical system and without the assistance of health care providers.

43. Wyomingites harmed by the Criminal Abortion Ban and Criminal Medication Ban will include women who seek care just days or weeks after discovering a missed period; those who

are already struggling to: (a) pull their children out of poverty, (b) finish school, (c) escape an abusive partner, or (4) overcome addiction; as well as sexual assault survivors who, as is common, do not report their assault to law enforcement, and families grieving fetal diagnoses which they are ill-equipped to handle.

44. In every case, Wyomingites who have relied on safe, legal access to abortion for decades will lose the right to determine the composition of their families and whether and when to become parents; the right to be free from state laws that perpetuate stereotypes about women and their proper societal role; the right to bodily autonomy and to be free from involuntary servitude; the right to make private health care decisions and to keep those health care decisions free from public scrutiny; and in some cases, the right to follow their religion when such religion considers abortion a necessary health care measure to prevent physical, emotional or other harm..

45. Any health care provider or other person assisting, aiding, abetting, or conspiring to accomplish an abortion will be subject to felony criminal prosecution, and face a 5-year prison sentence, a \$20,000.00 fine, or both. Wyo. Stat. § 36-6-125.

46. Physicians and health care providers who allegedly violate the Ban will be at risk of “immediately” losing their professional licenses and their families’ livelihoods. Wyo. Stat. § 35-6-126.

47. If a physician loses their professional license as the result of a felony conviction under the Criminal Abortion Ban, they will be unable to practice medicine anywhere in the United States.

48. Violation of the Criminal Medication Ban is a misdemeanor punishable by six month in prison and a fine up to \$9,000. Although the Ban exempts from punishment “[a] woman upon whom a chemical abortion is performed or attempted,” it is unclear whether a woman who

herself procures or takes abortion medication is subject to punishment. This lack of clarity will make it difficult or impossible for women to know if they are subject to punishment under the Ban.

49. As a result of the new Criminal Abortion Ban and Criminal Medication Ban, Dr. Anthony, Dr. Hinkle, and Circle of Hope's physicians and staff, who provide abortion among other sexual and reproductive health care, will have no choice but to stop providing abortion-related services to any of their patients. The Ban would detrimentally impact Chelsea's Fund and its clients by exhausting the fund's ability and resources to assist Wyoming women in obtaining legal abortion-related services.

50. The Criminal Abortion Ban and Criminal Medication Ban violate the Wyoming Constitution. Although *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (U.S. June 24, 2022) ("*Dobbs*"), has revoked the right to pre-viability abortions under the U.S. Constitution which had existed for nearly 50 years, the Wyoming Constitution serves as an independent source of rights for Wyomingites. *Hageman v. Goshen Cnty. Sch. Dist. No. 1*, 2011 WY 91, ¶ 7, 256 P.3d 487, 492 (Wyo. 2011) citing *Vasquez v. State*, 990 P.2d 476 (Wyo.1999).

51. The Wyoming Supreme Court has made clear that Wyoming's Constitutional guarantees are more expansive than those secured by the Federal Constitution, and the Wyoming Constitution should be interpreted "to protect people against legal discrimination more robustly than does the federal constitution." *Johnson v. State Hearing Examiner's Off.*, 838 P.2d 158, 165 (Wyo. 1992).

52. Plaintiffs on behalf of themselves, their patients and clients, and Wyoming's women and families, bring this lawsuit, seeking a declaration that the Wyoming Criminal Abortion Ban and the Wyoming Criminal Medication Ban violate the Wyoming Constitution.

53. Plaintiffs also seek a temporary restraining order and preliminary and permanent injunctive relief to prevent Defendants from enforcing the Wyoming Criminal Abortion Ban and Wyoming Criminal Medication Ban in Teton County and throughout Wyoming.

PARTIES

C. Plaintiffs

54. Plaintiff Danielle Johnson (“Ms. Johnson”) is married and a resident of Teton County, Wyoming. She is a registered nurse at a community-based hospital in Wyoming in the Emergency Department. She is certified as a sexual assault nurse examiner. Ms. Johnson intends to have additional children, beyond the two she currently has, and to stay in Wyoming with her family. Her decision to have additional children in Wyoming is based on the availability of evidence-based healthcare, including abortion, which would not be available as a result of the Criminal Abortion Ban and the Criminal Medication Ban. At the time of the filing of the Complaint in the trigger ban case, she was 22 weeks pregnant.¹⁵

55. Plaintiff Kathleen Dow (“Ms. Dow”) is a resident of Albany County, Wyoming, and a student at the University of Wyoming College of Law. She is a reproductive age woman with immediate plans to marry her fiancé and have children in the state of Wyoming. Ms. Dow is a life-long practicing conservative Jew who intends to continue practicing her faith, including raising her children in her faith, which requires her to consider abortion as an available health care alternative in the event of pregnancy conditions which threaten her physical or emotional well-being. Ms. Dow hopes to stay in Wyoming in her chosen career. Ms. Dow would strongly consider moving out of Wyoming if she is not able to obtain evidence-based medical care, including abortion services, which

¹⁵ Ms. Johnson gave birth to a healthy son in November of 2022.

would be illegal under the Wyoming Criminal Abortion Ban and the Wyoming Criminal Medication Ban.

56. Plaintiff Giovannina Anthony, M.D., (“Dr. Anthony”) is a resident of Teton County, Wyoming, and an Obstetrics and Gynecology specialist. Her duties include all forms of gynecologic and obstetric care, including medication abortions. Dr. Anthony’s immediate plans include remaining in Teton County, Wyoming and providing the same health care services to her patients, including abortions. Dr. Anthony brings her claims on her behalf and on behalf of her patients.

57. Plaintiff Rene Hinkle, M.D., (“Dr. Hinkle”) is a resident of Laramie County, Wyoming, and an Obstetrics and Gynecology specialist who provides health care for women including full obstetric services and primary gynecology and surgery. While she does not perform elective abortions, Dr. Hinkle does offer counseling to patients about all medical options available to them, including abortion. She also routinely treats patients with high-risk pregnancies, miscarriages, ectopic pregnancies, and fetal anomalies, including by prescribing abortion medication. Dr. Hinkle’s immediate plans include remaining in Laramie County, Wyoming and providing the same health care services to her patients. Dr. Hinkle brings her claims on her behalf, and on behalf of her patients.

58. Plaintiff Chelsea’s Fund is a non-profit 501(c)(3) organization that enables all Wyomingites to access abortion services through information, funding assistance, and other logistical support necessary to facilitate travel, lodging, and childcare for a person seeking abortion care. Chelsea’s Fund plans to continue offering its services to its constituents throughout Wyoming and eastern Idaho so long as its capacity to do so is not inalterably impacted by Wyoming’s Criminal Abortion Ban. Chelsea’s Fund brings its claims on behalf of itself and on behalf of its constituents who rely upon their association with the organization to protect their rights.

59. Circle of Hope Health Care Services, Inc., (“Circle of Hope”) is a domesticated Wyoming nonprofit corporation that constructed a medical clinic in Casper, Wyoming, where it will offer abortion and other health-related services desperately needed in Wyoming. The clinic was to open in June of 2022, before arson delayed the opening until fire-remediation and reconstruction is complete. The opening is imminent and is planned to take place in the coming weeks. Circle of Hope also purchased and operates a mobile unit providing reproductive health care to its patients throughout Wyoming.

60. Circle of Hope provides an array of reproductive health care services, including medication and surgical abortions performed by physicians licensed to practice medicine in Wyoming, and has retained staff and medical personnel. Circle of Hope will offer such services so long as Wyomingites’ fundamental rights they have always enjoyed continue to exist. Circle of Hope brings its claims on behalf of itself, and on behalf of its clients and patients who rely upon their association with the organization, and its clinics and health care providers, to protect each and all of their rights.

B. Defendants

61. Defendant State of Wyoming is responsible for upholding the Wyoming Constitution. The State of Wyoming has proposed enactment and enforcement of the Wyoming Criminal Abortion Ban as stated herein and has authority through state and local officials to enforce it.

62. Defendant Mark Gordon (“Governor Gordon”) is the Governor of Wyoming. He may require the Attorney General to aid local prosecutors and/or law enforcement in the discharge of their duties. Governor Gordon is sued in his official capacity for the relief sought herein.

63. Defendant Bridget Hill (“Ms. Hill”) is the Attorney General for the State of Wyoming, and the State’s chief legal officer. She exercises supervisory power over local prosecutors throughout Wyoming; and is also responsible for defending Wyoming laws against constitutional challenges. Ms. Hill is sued in her official capacity

64. Defendant Matthew Carr (“Mr. Carr”) is the Sheriff of Teton County, and Teton County’s chief law enforcement officer. His official position charges him with enforcement of the laws of the State of Wyoming. Mr. Carr is sued in his official capacity.

65. Defendant Michelle Weber (“Ms. Weber”) is the Chief of Police for the Jackson Police Department, and she is the chief law enforcement officer for the Town of Jackson, Wyoming. Her official position charges her with enforcement of the laws of the State of Wyoming. Ms. Weber is sued in her official capacity.

VENUE AND JURISDICTION

66. The Ninth Judicial District Court in Teton County is the proper venue for this action because the Wyoming Criminal Abortion Ban would be a law of the State of Wyoming, enforceable by its peace officers, including Defendants Carr and Weber, and the officers they supervise; because its enforcement would impact the citizens of Teton County, including Ms. Johnson and Dr. Anthony and her patients. This Court is also the proper venue pursuant to Wyo. Stat. § 1-5-108.

67. This Court has jurisdiction over this matter pursuant to Wyo. R. Civ. P. Rule 57 as it may declare rights of the parties pursuant to Wyo. Stat. § 1-37-102; because Plaintiffs are persons whose rights, status or other legal relations are affected by the Wyoming Constitution the Wyoming Criminal Abortion Ban and the Wyoming Criminal Medication Ban pursuant to Wyo.

Stat. § 1-37-103; because it has general equitable power to enforce the Wyoming Constitution; and, because the relief sought is a declaration that will have the force and effect of a final judgment.

68. Plaintiffs have existing and genuine fundamental rights at stake; thus, these proceedings are genuinely adversarial in character.

69. The controversy is one upon which judgment of this Court will effectively operate; and one in which the Court's decision will have the effect of a final judgment regarding the law.

70. The fundamental rights of Wyomingites at stake in this matter are of great and overriding public importance and moment.

71. This Court has jurisdiction to issue the injunctive relief sought herein and in the contemporaneous and upcoming motions for injunctive relief pursuant to Wyo. Stat. § 1-28-101, *et seq.*, as well as its general equitable powers to enforce the Wyoming Constitution.

ADDITIONAL FACTUAL ALLEGATIONS

A. Wyoming's Criminal Abortion Ban and Criminal Medication Ban

72. Plaintiffs incorporate all previous allegations as if fully set forth herein.

73. The Wyoming Criminal Abortion Ban is currently effective for enforcement in Teton County and throughout Wyoming. (*See supra* ¶ 24, incorporated herein).

74. As of the effective date, performing an abortion in violation of the Wyoming Criminal Abortion Ban will be a felony for which abortion providers, their staff and anyone assisting with an abortion, will risk a prison term of five (5) years, a fine of \$20,000.00, or both.

75. Any “professionally licensed” person who violates the Ban (nurses, doctors, etc.) “commits an act of unprofessional conduct” and their license to practice in Wyoming “shall be immediately revoked by the state board of medicine after due process.” Wyo. Stat. § 35-6-126.

76. Wyoming's Criminal Medication Ban will become effective on July 1, 2023. As of this date, performing a medication abortion will be a misdemeanor for which abortion providers, their staff and anyone assisting with a medication abortion will risk of prison term of six months and a fine of \$9,000.

B. The Impact of Wyoming's Criminal Abortion Ban and Criminal Medication Ban on Plaintiffs

i. Ms. Johnson

77. Ms. Johnson has never had a government impose its morals into her health care. At the enactment of the trigger ban, Ms. Johnson was 22 weeks pregnant. She ultimately delivered a healthy child in November 2022. Ms. Johnson presently intends to have more children in Wyoming, subject to her ability to obtain all evidence-based care for those pregnancies, including abortion.

78. On the date of this filing, Ms. Johnson is entitled to all evidence-based health care as recommended by the American College of Obstetrics and Gynecology, the American Medical Association, and other entities that support evidence-based health care.

79. On the date of this filing, Ms. Johnson is entitled to all ethical and sound health care as determined by her health care providers.

80. The Wyoming Criminal Abortion Ban and Criminal Medication Ban will prohibit her from seeking and receiving such health care, as referenced in the preceding two paragraphs, in Teton County, and throughout Wyoming.

81. If Ms. Johnson experiences complications with her future pregnancies, the Ban will likely cause her health care providers to delay and/or deny appropriate medical or surgical treatment until she is in a life-threatening situation. This is a risk she and her family should not have to face when such treatment has been, and is, available to her on the day this Complaint is filed.

82. If Ms. Johnson's future pregnancies reveal that she is pregnant with a fetus with defects that will prevent the fetus from surviving a significant amount of time, or if she experiences pregnancy complications that pose a risk to her or the fetus, she does not wish to continue the pregnancy until labor occurs, or until her health care providers can ensure they have complied with the Criminal Abortion Ban's and Criminal Medication Ban's ambiguous and confusing pre-requisites, or until fetal death in-utero. Instead, she wishes to have all evidence-based health care options available to her on the day this Complaint is filed, including termination with medication, which the bans would prohibit.

83. Ms. Johnson is also a registered nurse who provides health care in an emergency room setting pursuant to her professional license issued by the Wyoming Department of Health and the Nightingale Oath.

84. On the day this Complaint is filed, Ms. Johnson is duty-bound and obligated to assist with the administration of all evidence-based health care which is ethical and sound in order to meet her patients' emergency needs, including patients who are pregnant.

85. If the Wyoming Criminal Abortion Ban and Criminal Medication Ban become effective, Ms. Johnson will be legally constrained from providing her pregnant patients with all available evidence-based health care which she is ethically and professionally obligated to provide. Such constraint could compromise her license and her livelihood. For instance, Ms. Johnson is duty bound to provide appropriate medical care to patients who suffer a trauma, such as a car accident, even if they are pregnant and providing that care will terminate the pregnancy.

86. If the Criminal Abortion Ban and/or Criminal Medication Ban become effective, Ms. Johnson may be forced to consider discontinuing her employment and relocate to another state where she is not legally constrained from providing her patients with the care they medically need.

ii. Ms. Dow

87. Ms. Dow has never had a government impose its morals into her health care.

88. She has previously had an abortion to protect herself after becoming pregnant in an abusive relationship.

89. Ms. Dow is engaged to be married in Wyoming, and plans to imminently have children with her fiancé after they are married. Ms. Dow is currently in law school in Wyoming and intends to remain in Wyoming working for a law firm where she is presently interning.

90. Ms. Dow is also a practicing Jew. Pursuant to her faith, she is to always consider abortion as an alternative if her physical *or mental* health or life are in danger while pregnant.

91. Ms. Dow has sincerely held religious beliefs that an unborn fetus is not a person; that life begins at birth and not before; and that abortion is appropriate and at times mandatory at any time before birth where necessary to protect the woman's physical and mental well-being.

92. Ms. Dow's sincerely-held religious beliefs on personhood and abortion are supported by long-standing Jewish doctrine that holds a fetus is not a person; that the woman's interests always takes precedence over the fetus; and that termination of a pregnancy is permissible and even required where necessary to preserve a woman's well-being.

93. On the date of this filing, Ms. Dow is entitled to all evidence-based health care as recommended by the American College of Obstetrics and Gynecology, the American Medical Association, and other entities that support evidence-based health care.

94. On the date of this filing, Ms. Dow is entitled to all ethical and sound health care as determined by her health care providers.

95. The Wyoming Criminal Abortion Ban and Criminal Medication Ban will prohibit her from seeking and receiving such health care, as referenced in the preceding two paragraphs, in Wyoming.

96. If Ms. Dow experiences complications with a future pregnancy, the bans could, and likely would, cause her health care providers to delay and/or deny appropriate medical or surgical treatment until she was in a life-threatening situation, a risk she and her family should not have to face when such treatment has been and is available to her on the day this Complaint is filed.

97. If Ms. Dow's future pregnancy reveals that she is pregnant with a fetus with significant deformities, or if she experiences pregnancy complications that pose a risk to her or the fetus, she does not wish to continue the pregnancy until labor occurs, or until her health care providers can ensure they have complied with the Criminal Abortion Ban's and Criminal Medication Ban's ambiguous and confusing pre-requisites, or until fetal death in-utero, and wishes to have all evidence-based health care options available to her on the day this Complaint is filed, including termination, which the ban would prohibit.

98. If the Criminal Abortion Ban and/or Criminal Medication Ban is effective, Ms. Dow will seriously consider moving to another state where she will be able to obtain evidence-based medical care for her future pregnancies and where Christian values will not be imposed upon her by law.

iii. Dr. Anthony

99. Dr. Anthony has delivered more than 3,000 babies in her career, with many of those births complicated by maternal and fetal conditions. She has seen a broad spectrum of human complications during pregnancy and childbirth and has a deep understanding of the complications that can cause durable disability and death. She manages her own high-risk pregnancy patients.

100. Dr. Anthony's education, training and experience have led her to practice medicine in a manner which provides her patients with evidence-based health care, including treatments that are potentially harmful to a fetus but urgent and medically necessary for the patient / mother. The Criminal Abortion Ban and Criminal Medication Ban would function as barriers to this type of care.

101. Dr. Anthony's health care services include medication abortions which many patients prefer to surgical abortion. Dr. Anthony also provides surgical abortion care services.

102. Dr. Anthony is committed to providing high-quality, compassionate obstetric care, including abortion care, that honors each patient's dignity and autonomy.

103. In 2021 and 2022, Dr. Anthony's office managed dozens of Wyoming's abortion-related services.

104. Because Wyoming has a shortage of obstetrician/gynecologists, Dr. Anthony sees patients from Sublette, Lincoln, Fremont, and Sweetwater Counties.

105. If the Wyoming Criminal Abortion Ban and/or Criminal Medication Ban go into effect, she will have to decline care for women who have desired pregnancies, out of fear that a pregnancy loss could lead to felony charges and incarceration, as well as collateral professional consequences. In these situations where a patient requires an abortion, Dr. Anthony will be forced to transfer the patient out of state to avoid the risk of criminal prosecution and loss of licensure and livelihood.

106. If the Wyoming Criminal Abortion Ban and/or Criminal Medication Ban go into effect, Dr. Anthony will no longer be able to offer ethical, evidence-based health care to her patients.

107. Presently, Dr. Anthony's office is planning to stop providing abortions to prepare for the Bans. She is prepared to continue offering such services at a moment's notice if the Bans are halted.

108. The Wyoming Criminal Abortion Ban and Criminal Medication Ban will also force all of Wyoming's certified obstetrics care physicians, including Dr. Anthony, to delay or deny appropriate medical care for women with desired pregnancies.

109. If the Criminal Abortion Ban and/or Criminal Medication Ban is implemented, physicians such as Dr. Anthony will hesitate to provide care in situations where appropriate medical care is necessary and warranted, but criminalized, for fear of violating the arbitrary and vague language of the law. In order for Dr. Anthony's patients to receive appropriate and timely care, she will be forced to ask them to drive to Colorado, Utah, or Montana contrary to all good standards of medicine and evidence-based healthcare.

iv. Dr. Hinkle

110. Dr. Hinkle has delivered more than 3,000 babies in her career, and more than 2,500 in Cheyenne, with many of those births complicated by maternal or fetal conditions. She has seen a broad spectrum of human complications during pregnancy and childbirth, and she has a deep understanding of the complications that can cause durable disability and death. She manages her own high-risk pregnancy patients.

111. Dr. Hinkle treats patients who have lost viable, desired pregnancies to miscarriage and ectopic pregnancies.

112. Dr. Hinkle is committed to providing high-quality, compassionate care that honors each patient's dignity and autonomy. When patients desire a first trimester elective abortion, they are referred to a provider who can assist. Dr. Hinkle does offer, and counsels her patients regarding,

elective second trimester terminations for pregnancies that are found to have lethal fetal complications.

113. Dr. Hinkle’s education, training and experience have led her to practice medicine in a manner which provides all of her patients with evidence-based health care, including treatments that are potentially harmful to a fetus, but urgent and medically necessary for the patient/mother. The Criminal Abortion Ban could function as a barrier to this type of care.

114. The Wyoming Criminal Abortion Ban could discourage procedures Dr. Hinkle performs, such as Dilation and Curettage for miscarriage, and lifesaving surgery for ectopic pregnancies, for fear of prosecution and prison, as the definitions in the Criminal Abortion Ban are incomplete or inaccurate.

115. The Wyoming bans may also discourage her patients in need of the services referenced in the preceding paragraph, as they will stay home longer, bleed more and have increased morbidity and mortality due to lack of understanding that such procedures are not elective abortions.

116. As a result of the Wyoming Bans, and the inaccurate, incomplete, and ambiguous definitions of medical terms and standards of care therein, Dr. Hinkle will have to stop offering elective second trimester terminations for pregnancies that are found to have lethal fetal complications – abnormalities which are devastating for patients and traveling (sometimes alone) to another state for the procedure will make them even more so. Those lethal abnormalities are trisomy 18, certain skeletal dysplasia, trisomy 13, anencephaly, and any triploidy. These undeniably fatal fetal conditions may still not find any protection under the Ban because of the Ban’s confusing and ambiguous use of an exception for only “lethal fetal anomal[ies] for which there is a “substantial likelihood of death of the child within hours of the child’s birth.” Wyo. Stat. § 35-6-122(a)(vi). With Trisomy 18 and Trisomy 13, a fetus could survive for several hours, and potentially even a day or two, after birth.

With skeletal dysplasia, a child could survive for a few days following birth. Out of fear for prosecution and loss of licensure under the Bans, Dr. Hinkle and her staff would not be able to perform abortions when these fetal anomalies are diagnosed.

117. The Wyoming Bans' ambiguous and confusing terms either have no medical meaning or are contrary to medical understandings. These vague terms will also reduce the necessary, medical evidence-based options for patients with desired pregnancies, but who have a fetus with a lethal abnormality, placing her pregnant patients at risk for bleeding, pre-eclampsia, infection, and death.

118. If the Wyoming Criminal Abortion Ban and/or Criminal Medication Ban go into effect, Dr. Hinkle will no longer be able to offer ethical and evidence-based health care to her patients.

119. The Wyoming Criminal Abortion Ban and Criminal Medication Ban will also force all of Wyoming's certified obstetrics care physicians, including Dr. Hinkle, to delay appropriate and necessary medical care for women who are or may become pregnant, and who may or may not desire to remain pregnant for a myriad of reasons.

v. Chelsea's Fund

120. Chelsea's Fund's mission is to enable all Wyoming and eastern Idaho residents to access abortion services, through information, funding assistance, and travel support, which sometimes involves out-of-state travel.

121. It provides assistance to women and families who otherwise could not afford abortion services.

122. During 2022, 64% of the abortions Chelsea's Fund supported were for services in Wyoming.

123. The Criminal Bans will significantly hinder Chelsea's Fund from continuing its service to Wyoming citizens, and the Bans will be devastating for the clients of Chelsea's Fund and overwhelm the organization. The funding and logistical support for all abortions currently provided in Wyoming, which will have to be administered and performed outside of Wyoming, is significantly beyond the organization's current capacity.

124. Chelsea's Fund's capacity to continue operations will be quickly eclipsed by the increased cost of services for each client it serves, and the Fund estimates that it may not be able to meet the needs of all its clients as its funding can no longer meet the anticipated increase in per-client cost.

125. Critically, Chelsea's Fund represents the interests of the constituents it serves, who will lose their ability to access necessary evidence-based healthcare and abortion services if the Bans are in effect.

126. Chelsea's Fund has already suffered by the uncertainty around abortion care rights in Wyoming as a result of the trigger ban, including being denied insurance coverage by a prospective carrier on the basis that the carrier no longer works with funds with any social ties to abortion.

vi. Circle of Hope

vii. In 2021, Circle of Hope signed a two-year lease for premises to run a clinic in Casper, Wyoming, where it intends to operate a private medical office for general gynecological care, medical and procedural abortion, family planning, gender affirming care, family medicine, STD/STI testing and treatment, and sex education consultations. Circle of Hope anticipates serving 1,100 patients per year.

viii. Circle of Hope hired 6 staff members, including a full-time, salaried clinic administrator, a ¾-time, hourly patient coordinator, two part-time, hourly medical assistants, and

two part-time, hourly registered nurses. It also has three Wyoming-licensed physicians ready to provide services, and two more physicians in the process of obtaining Wyoming licensure.

ix. Circle of Hope is opening imminently in Casper, Wyoming. Its primary service offerings will be surgical and medication abortion services. If it is not permitted to provide those services without fear of criminal prosecution and loss of licensure for its staff, the clinic will lose the goodwill of the community and patients it is designed to serve.

x. The Criminal Abortion Ban and Criminal Medication Ban will stop all of Circle of Hope's efforts to provide essential medical care to Wyomingites, and completely thwart its business purpose.

C. The Impact of the Bans on Wyomingites¹⁶

xi. The Wyoming Criminal Abortion Ban and Criminal Medication Ban will force Wyomingites to continue a pregnancy against their will without adequate health care, including the availability of safe and legal abortion.

xii. Despite the Criminal Abortion Ban's attempt to redefine reproductive health care as not constituting health care, Wyoming has long-recognized abortion as health care. Current Wyoming law defines "abortion" as "an act, procedure, device, or prescription administered to or prescribed for a pregnant woman by any person with knowledge of the pregnancy, including the pregnant woman herself, with the intent of producing the premature expulsion, removal or termination of a human embryo or fetus, except that in cases in which the viability of the embryo or fetus is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion" Wyo. Stat. § 35-6-101(a)(i). Additionally, this Court has concluded that abortion is "health care." Johnson I, Order Granting Prelim. Inj. at ¶¶ 26

¹⁶ Most, if not all, of the Impacts under this section of the Complaint impact the patients of Drs. Anthony and Hinkle, and the Circle of Hope patients and clients of Chelsea's Fund.

– 32 (Aug. 10, 2022). This finding is supported by Wyoming Statutory definitions, legal definitions, professional physician organizations, and numerous other sources.¹⁷

xiii. Absent action from this Court, women will be forced to forego educational opportunities, face decreased opportunities to fulfill their economic potential, and may be more likely to experience economic insecurity and raise their children in poverty due to the Wyoming Criminal Abortion Ban and Criminal Medication Ban.¹⁸

¹⁷ Current Wyoming law prohibits abortions only after “viability,” except “when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment.” Wyo. Stat. § 35-6-102.

“Viability” is defined as “that stage of human development when the embryo or fetus is able to live by natural or life-supportive systems outside the womb of the mother according to appropriate medical judgment” Wyo. Stat. § 35-6-101(a)(vii).

Only physicians are authorized to perform abortions in Wyoming. Wyo. Stat. § 35-6-104. Physicians have been providing safe abortions in Wyoming for decades.

The State of Wyoming prescribes forms for physicians to use to report information about abortions performed in Wyoming. Wyo. Stat. § 35-6-107.

According to the American College of Obstetricians and Gynecologists, “abortion is an essential component of women’s health care.” <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare>. “Abortion care is included in medical training, clinical practice and continuing medical education.” *Id.*

The World Health Organizations lists abortion care as an essential health care service. <https://www.who.int/news-room/fact-sheets/detail/abortion>.

Complications from abortion are rare. There are no long-term health risks from abortion. Having an abortion does not increase a woman’s risk of infertility, pre-term delivery, breast cancer, or mental health disorders. National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States*, pp. 9-10 (2018).

Complications from abortion are much rarer than complications arising during childbirth. National Academies, p. 11. The risk of death following a legal abortion is a fraction of the risk of death for childbirth (0.7 per 100,000 compared to 8.8 per 100,000). *Id.* at 74-75. In fact, Abortion carries a lower risk of death than many common medical procedures such as colonoscopies, plastic surgery, and adult tonsillectomies. *Id.*

¹⁸ Published pre-*Dobbs*, Brookings reported detailed economic data and research on the effect of abortion access on women’s lives. The report states, “[r]esearch demonstrates that abortion access does, in fact, profoundly affect women’s lives by determining whether, when, and under what circumstances they become mothers.” <https://www.brookings.edu/research/what-can-economic-research-tell-us-about-the-effect-of-abortion-access-on-womens-lives/?amp>

xiv. Women in Wyoming may decide to end a pregnancy for any number of reasons, including that continuing with a pregnancy may pose a significant risk to their health, contraceptive failure, health concerns for the fetus, intimate partner violence or abandonment, food insecurity, lack of childcare options, limited job prospects, poor housing, insufficient financial and/or medical support, contraceptive failure, severe fetal anomaly, and the unavailability of paid or unpaid family leave. Women may also decide that it is not the right time for them to have a child or to add another child to their families.

xv. The Criminal Abortion Ban and Criminal Medication Ban do not address or account for any of these concerns and will force women to seek out-of-state health care.

xvi. For some women in Wyoming, the potential barriers to out-of-state abortion care will prove insurmountable. Women forced to travel will experience many logistical obstacles. Women may be kept from receiving the care they need due to overwhelmed clinics, increased costs, loss of income, and for some, an increased risk of intimate partner violence. These barriers will inevitably force some women to turn to extralegal, unsafe abortion alternatives.

xvii. The Criminal Abortion Ban will arbitrarily require women to prove they are a victim of rape or sexual assault to qualify for a legal abortion by reporting “the act of incest or sexual assault to a law enforcement agency” *and* providing “a copy of the report” to a physician prior to receiving reproductive health care. Even if a sexual assault is self-evident—for instance, a minor becomes pregnant by a person not a minor, which may be statutory rape—she must go through the harassing procedural hurdle of submitting and obtaining a copy of a police report before she can receive reproductive health care. These ambiguous and onerous requirements will force women and families who lack resources and educational opportunities to face hurdles that will compound the difficulty of obtaining necessary medical care.

xviii. Even where women “report” a rape or incest to law enforcement, it is unclear how they would obtain a copy of a “report” to provide a physician, or what would qualify as such a “report.” Furthermore, statistically it is highly unlikely that women attempt to get an abortion under the exception if they are required to report their victimization to the police.¹⁹

xix. Where women become pregnant willingly, their access to health care is limited, enforcing Wyoming’s Criminal Abortion Ban and Criminal Medication Ban will exacerbate the health care crisis in Wyoming by intimidating doctors through threats of incarceration and termination of their license, and these threats will keep doctors from coming to the state and drive up the cost of health care.²⁰

xx. The effect of Wyoming’s Criminal Abortion Ban and Criminal Medication an on physicians in the State is chilling. Plaintiffs’ patients, who do not believe any of the specified risks set forth in the Criminal Abortion Ban and/or Criminal Medication Ban apply to them, will have no access to the health care they choose and/or need and will be forced to continue a pregnancy if the law goes into effect.

xxi. Wyoming has a shortage of health care providers. For example, last year Memorial Hospital of Carbon County announced that as of June 16, 2022, it would no longer provide labor and delivery services because of financial issues. This means that pregnant women in Carbon

¹⁹ The transparent and invidious goal of this exception is to discourage sexual assault survivors from obtaining abortions. Aside from this unacceptable motive and a willful blindness to the trauma to victims, the practical problems with such a requirement are numerous. Many survivors of sexual assault and/or incest do not report their abuse until years later, if ever. This understandable delay is obviously problematic for a victim who becomes pregnant due to sexual assault and/or incest. It is also well-known that reporting of abuse is often as traumatic as the abuse itself. Requiring such a report in order that the victim receive necessary health care is no less than state-sponsored abuse. There is also the troubling possibility that should a woman be denied an abortion because she does not report her rape, she could be forced to share custody of the child with her rapist, and a woman or pregnant minor who cannot report incest will be forced to bear a child which is the result of the incest.

²⁰<https://www.npr.org/2023/02/27/1159822864/if-wyoming-bans-abortion-hospitals-may-have-an-even-harder-time-recruiting-docto>

County have to travel at least an hour or more to the nearest medical facility that delivers babies or can provide care for premature deliveries or other pregnancy-related complications.

xxii. Many women seek emergency care at least once during a pregnancy, and women with comorbidities (either preexisting or those that develop as a result of their pregnancy) are significantly more likely to seek emergency care.

xxiii. Women without health insurance may not have sufficient savings to cover pregnancy-related expenses. A costly pregnancy, particularly for individuals already suffering from economic hardship, could have long-term and severe impacts on a family's financial stability.

xxiv. The Wyoming Criminal Abortion Ban is expressly based on the proposition that life begins at conception and that a fertilized egg is a full person entitled to all rights of Wyoming citizens. This viewpoint is distinct to certain Christian denominations, and is not shared by other religious denominations, including many Christians, Jews and Muslims, among others. The Wyoming Ban therefore imposes a sectarian religious view on all Wyoming citizens, and coerces all citizens to conform their most personal and intimate actions to this sectarian view even if their own religious beliefs are different, or if they hold no such religious beliefs. As such, the Wyoming Ban constitutes an establishment of religion and the imposition of sectarian beliefs on all Wyoming citizens.

CLAIMS FOR RELIEF

First Cause of Action:

Declaratory Judgment pursuant to Wyo. Stat. § 1-31-101 *et seq.* and Wyo. R. Civ. P. 57

xxv. Plaintiffs incorporate all previous allegations as if fully set forth herein.

xxvi. Plaintiffs are persons and entities whose rights, status or other legal relations are affected by the Wyoming Constitution and the relevant Wyoming Statutes which make up the Wyoming Criminal Abortion Ban and Wyoming Criminal Medication Ban.

xxvii. The parties include persons who have a claim or interest, or represent those with a claim or interest, which would be affected by the declaration, including the State’s Attorney General.

xxviii. The Wyoming Constitution and the Wyoming Supreme Court jurisprudence are replete with enumerated and unenumerated, natural rights which guarantee Wyomingites’ fundamental right to be left alone by the government, which includes their privacy, absent a compelling need narrowly drawn.

xxix. The Wyoming Supreme Court has declared that “natural rights are recognized by our constitution.” *State v. Langley*, 53 Wyo. 332, 84 P.2d 767, 770 (1938).

xxx. The Wyoming Supreme Court has declared that Wyoming courts may not deny or disregard a claimed right because it is not expressly enumerated, relying on article 1, § 36, stating that “this constitutional provision stands as an acknowledgement that fundamental personal rights, not specifically enumerated in the constitution, are still protected from government infringement.” (*Watt v. Watt*, 971 P.2d 608, 615 (Wyo. 1999), overruled on other grounds, (*citing See Cross v. State*, 370 P.2d 371, 376 (Wyo. 1962)), which includes the right to privacy. *Emp. Sec. Comm’n of Wyoming v. W. Gas Processors, Ltd.*, 786 P.2d 866, 872 (Wyo. 1990).

xxxi. Article 2 is the first of several constitutional provisions in the Declaration of Rights, which explicitly incorporate equality principles into the Wyoming Constitution, a mandate extending to all people and recognizing an inherent right to “life, liberty and the pursuit of happiness.”

xxxii. The Wyoming Supreme Court has observed that the language of article 2 (“Equality of all”) is quite similar to that found in the Declaration of Independence, which the Court has held constitutes a source of “fundamental” and “inalienable” rights entitled to strict judicial protection

as part of the liberty ensured under its provision. *Hagen v. Culinary Workers All. Loc. No. 337*, 70 Wyo. 165, 190, 246 P.2d 778, 788 (1952); *DS v. Dep't of Pub. Assistance & Soc. Servs.*, 607 P.2d 911, 918 (Wyo. 1980).

xxxiii. The Wyoming Supreme Court has held that the right to associate with one's family and to determine family composition is a fundamental unenumerated right entitled to constitutional protection despite the lack of explicit language recognizing such a right in the constitution. *DS*, 607 P.2d at 918.

xxxiv. The Wyoming Supreme Court has made it abundantly clear that the individual rights provisions with federal counterparts need not be interpreted the same as the Supreme Court interprets the federal charter.

xxxv. The Wyoming citizenry overwhelmingly passed the health care amendment, guaranteeing that Wyomingites "shall have the right to make his or her own health care decisions;" and that "[t]he state of Wyoming shall act to preserve these rights from *undue* governmental infringement." Art. 1, § 38 (emphasis added).

xxxvi. The Wyoming Criminal Abortion Ban and Wyoming Criminal Medication Ban trammel Plaintiffs' and Wyomingites' fundamental rights without a compelling need, nor is it narrowly tailored to achieve any compelling need. The Wyoming Criminal Abortion Ban and Criminal Medication Ban also do not further any legitimate government interest. It also is not a reasonable regulation of, and impermissibly infringes on, a woman's fundamental right to control her own health care.

xxxvii. Plaintiffs' fundamental rights which make up right to be left alone by the government absent a compelling need. narrowly drawn, include, but are not limited to, their rights against government establishment of religion, and Plaintiffs' rights to access to health care, to

equal protection under the laws, due process, uniform operation of the laws, to determine family composition, privacy and bodily autonomy. Wyo. Const. Art. 1 §§ 2, 3, 6, 7, 18, 19, 33, 34, 36 and 38, Art. 7, § 12, and Art. 21, § 25.

xxxviii. The Wyoming Criminal Abortion Ban and Criminal Medication Ban are also unconstitutionally vague, in that it is not possible to determine when abortion is permissible or when use of abortion medication is permissible.

xxxix. Plaintiffs are entitled to a Declaration of this Court that the Wyoming Criminal Abortion Ban and Criminal Medication Ban violate Plaintiffs' and their patients' and clients' Constitutional rights under the Wyoming Constitution; and that the Acts are therefore unlawful, invalid, and unenforceable.

Second Cause of Action:

Permanent Injunction pursuant to Wyo. Stat. §1-28-101 *et seq.* and Wyo. R. Civ. P. 57

xl. Plaintiffs incorporate all previous paragraphs as if fully set forth herein.

xli. Pursuant to Wyo. R. Civ. P. 65 and Wyo. Stat. §§ 1-28-101 *et seq.*, Plaintiffs will suffer irreparable harm, the equities balance in their favor and it is in the public interest if enforcement of the Wyoming Criminal Abortion Act and Criminal Medication Ban are enjoined from becoming effective, as it is unconstitutional. Plaintiffs are entitled to a temporary restraining order, preliminary injunction, and permanent injunction to enjoin enforcement of the Wyoming Criminal Abortion Ban and Criminal Medication Ban.

xlii. As Defendants will suffer no injury, security should be waived.

REQUESTS FOR RELIEF

Plaintiffs Respectfully request an Order of this Court:

xl.iii. Declaring the Wyoming Criminal Abortion Ban and Wyoming Criminal Medication Ban Unconstitutional under the Wyoming Constitution and that the Acts are therefore invalid and unenforceable;

xliv. Issuing a temporary restraining order and preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, and enforcing the Acts with respect to any abortion provided during the temporary, preliminary and permanent injunctions;

xlv. Waiving any security requirement for any injunction issued under Wyo. R. Civ. P. 65(c);

xlvi. Retaining jurisdiction of this action to render any further orders that this Court may deem appropriate;

xlvii. Awarding Plaintiffs' costs and expenses; and

xlviii. Granting such other and further relief the Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of March, 2023.



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CERTIFICATE OF SERVICE

This is to certify that this 21st day of March 2023, a true and correct copy of the foregoing was served as follows, with Acceptance of Service anticipated by the following:

Jay Arthur Jerde	<input type="checkbox"/> U.S. MAIL
Wyoming Attorney General's Office	<input type="checkbox"/> FED EX
109 State Capitol	<input type="checkbox"/> FAX
Cheyenne, WY 82001	<input type="checkbox"/> ECF
Jay.jerde@wyo.gov	<input checked="" type="checkbox"/> E-MAIL
<i>Attorney for Defendants Mark Gordon, Bridget Hill</i>	

Erin E. Weisman	<input type="checkbox"/> U.S. MAIL
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Lea M. Colasuonno	<input type="checkbox"/> U.S. MAIL
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 For: _____
Dominique Lohn- Paralegal for RB