

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

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. )

Civil Action No. 18853

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. )

**FILED** 335 pm  
MAR 18 2024  
*Dep. J. Smith*  
DISTRICT COURT  
9TH JUDICIAL DISTRICT  
TETON COUNTY WYOMING

**ORDER CERTIFYING QUESTIONS TO SUPREME COURT**

This matter comes before the Court upon its own Motion pursuant to Rule 11 of the Wyoming Rules of Appellate Procedure and upon entering an Order on Plaintiffs’ Request to Supplement the Record in Support of Plaintiffs’ Motion for Summary Judgment and Notice Regarding Plaintiffs Filing of Updated Citation. The Court having reviewed the file and being otherwise fully advised in the premises finds that the record in this matter is fully developed and issues before the Court involve questions of law that are determinative to this action in which there does not appear to be any controlling precedent in the decisions of the Wyoming Supreme Court.

**A. QUESTIONS OF LAW TO BE ANSWERED**

The Court finds that it would be in the interest of justice to certify the following questions of law to the Wyoming Supreme Court:

1. Does Wyo. Stat. § 35-6-139 titled “Chemical abortions prohibited, exceptions; penalty” and Wyoming’s Life is a Human Right Act (Act), codified under Wyo. Stat. §§ 35-6-120 to 35-6-138 violate Wyoming Constitution article 1, section 38?

**If not:**

2. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 2?
3. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 3?
4. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 6?
5. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 7?
6. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 18?
7. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 19?
8. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 33?
9. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 34?
10. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 1, section 36?
11. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 7, section 12?
12. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming Constitution article 21, section 25?
13. Is Wyo. Stat. § 35-6-120 *et seq.* unconstitutionally vague on its face?
14. Does Wyo. Stat. § 35-6-120 *et seq.* violate Wyoming citizens’ right to privacy?

**B. FACTS RELEVANT TO QUESTIONS CERTIFIED**

1. In 1973, the United States Supreme Court held that the United States Constitution protects a woman’s right to have an abortion before viability. *Roe v. Wade*, 410 U.S. 113 (1973). Thereafter, the Wyoming Supreme Court found that Wyoming’s existing abortion regulations were unconstitutional. *Doe v. Burk*, 513 P.2d 643, 644-45 (Wyo. 1973). Four years later, the Wyoming

State Legislature enacted Wyo. Stat. § 35-6-102(a) which codified the United States Supreme Court's holding in *Roe v. Wade*.

2. In 2012, Wyoming citizens passed the “Right of Health Care Access” constitutional amendment. Wyo. Const. art. 1, § 38. The amendment provided Wyoming citizens with the right to make their own health care decisions and the right to directly pay their health care providers for health care services. Wyo. Const. art. 1, § 38(a)-(b). The amendment allows the Wyoming Legislature to place reasonable and necessary restrictions on health care decisions to: (1) “protect the health and general welfare of the people,” or (2) “to accomplish the other purposes set forth in the Wyoming Constitution.” Wyo. Const. art. 1, § 38(c). Finally, the amendment requires the State of Wyoming to preserve the rights to health care access from “undue governmental infringement.” Wyo. Const. art. 1, § 38(d).
3. On June 24, 2022, the U.S. Supreme Court decided *Dobbs v. Jackson Women’s Health Org.*, 142 S.Ct. 2228 (2022). The decision held that the U.S. Constitution does not confer a right to abortion and the authority to regulate abortion is returned to the people and their elected representatives.
4. In 2023, the Wyoming Legislature enacted the “Life is a Human Right Act” which is codified under Wyo. Stat. §§ 35-6-120 to 35-6-138. In addition, the Wyoming Legislature enacted Wyo. Stat. § 35-6-139 titled “Chemical abortions prohibited; exceptions; penalty” which prohibits the use of medication to perform abortions. These statutes make almost all medicated and surgical abortions unlawful throughout the entire duration of a woman’s pregnancy.
5. Both the Act and the medicated abortion statute provide some exceptions. The Act includes five exceptions. Wyo. Stat. § 35-6-124(a). The Legislature identified the following exceptions under the Act: (1) “pre-viability separation” procedures that prevent death, a substantial risk of death, or serious and permanent impairment of a life-sustaining organ; (2) accidental medical treatment that

results in the death of a fetus; (3) abortions when the pregnancy is the result of incest or rape so long as the victim provides a copy of a report made to law enforcement; and (4) abortions when the pregnancy is the result of a molar pregnancy or the fetus has a lethal fetal anomaly that creates a substantial likelihood of the death of the child within hours of birth.

6. Exceptions under Wyo. Stat. § 35-6-139 include: (1) when used as a contraceptive agent prior to conception; (2) when used to treat a natural miscarriage; (3) when necessary to preserve a woman from an imminent peril that substantially endangers her life or health; and (4) for an abortion when the pregnancy is a result of incest or sexual assault.
7. The Act and Wyo. Stat. § 35-6-139 also assess criminal fines and penalties. Persons in violation of the Act are subject to felony prosecution, a fine not to exceed \$20,000, and potential imprisonment for up to five (5) years. The Act also subjects physicians or other professionally licensed persons to civil penalties that include immediate revocation of their professional license and a fine up to \$5,000. Finally, the Act includes civil statutory damages to prevailing plaintiffs in the amount of \$10,000. Persons in violation of Wyo. Stat. § 35-6-139 are subject to misdemeanor prosecution, a fine up to \$9,000, and the possibility of up to six months imprisonment.

### **C. NATURE OF THE CONTROVERSY IN WHICH THE QUESTIONS AROSE**

1. After the passage of the Act and Wyo. Stat. § 35-6-139, the Plaintiffs filed this action on March 17, 2023. Plaintiffs filed an Amended Complaint for Declaratory Judgment and Injunctive Relief on March 21, 2023, asserting that both the Act and Wyo. Stat. § 35-6-139 violate the Wyoming Constitution.
2. The Plaintiffs include the following persons:
  - a. Danielle Johnson, a pregnant individual and practicing nurse residing in Teton County, Wyoming;

- b. Kathleen Dow, a woman of child-bearing age residing in Albany County, Wyoming;
  - c. Giovannina Anthony, M.D., an Obstetrics and Gynecology specialist residing in Teton County, Wyoming who provides abortion services;
  - d. Rene R. Hinkle, M.D., an Obstetrics and Gynecology specialist residing in Laramie County, Wyoming who provides obstetric services and primary gynecology and surgery;
  - e. Chelsea's Fund, a Wyoming non-profit 501(c)(3) organization that provides financial and logistical support to Wyoming residents seeking abortions; and
  - f. Circle of Hope Healthcare d/b/a Wellspring Health Access, a Wyoming non-profit corporation located in Natrona County, Wyoming that offer abortion and other health-related services to Wyoming residents.
3. The Defendants include:
- a. State of Wyoming;
  - b. Mark Gordon, Governor of the State of Wyoming;
  - c. Bridget Hill, Attorney General for the State of Wyoming;
  - d. Matthew Carr, Sheriff for Teton County, Wyoming; and
  - e. Michelle Weber, Chief of Police for the Town of Jackson, Wyoming.
4. This Court entered temporary restraining orders enjoining the enforcement of the Act and Wyo. Stat. § 35-6-139 after finding that the Plaintiffs were substantially likely to succeed on the merits of their claim that the statutes violated Wyo. Const. art. 1, § 38.
5. Since the entry of the temporary restraining orders, the parties have conducted discovery and filed cross motions for summary judgment on each of the constitutional challenges asserted by the Plaintiffs. The cross motions for summary judgment were fully briefed by the parties and *Amici Curiae* as follows:

- a. On September 18, 2023, Plaintiff filed *Plaintiffs' Motion for Summary Judgment* and *Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Summary Judgment*;
- b. On October 5, 2023, the State Defendants filed *State Defendants' Cross-Motion for Summary Judgment* and *State Defendants' Combined Memorandum of Law in Response to Plaintiffs' Motion for Summary Judgment and in Support of State Defendants' Cross-Motion for Summary Judgment*;
- c. On November 3, 2023, Plaintiffs filed *Plaintiffs' Memorandum in Opposition to State Defendants' Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment*;
- d. On November 16, 2023, the State Defendants filed *Reply Memorandum in Support of State Defendants' Cross-Motion for Summary Judgment*;
- e. *Amici Curiae* also filed a *Motion for Leave of Court to File Brief of Amici Curiae in Support of State Defendants* and a *Proposed Amicus Brief of Wyoming Physicians in Support of State Defendants* on October 16, 2023. Plaintiffs filed *Plaintiffs' Response to Motion for Leave to File Brief of Amici Curiae in Support of State Defendants* on October 30, 2023. Next, *Amici Curiae* filed a *Motion for Leave of Court to File Amended Brief of Amici Curiae in Support of State Defendants* and an *Amended\* Amicus Brief of Wyoming Physicians in Support of State Defendants* on November 9, 2023. Plaintiffs filed *Plaintiffs' Non-Opposition to Motion for Leave to File Amended Amicus Brief* on November 17, 2023. Plaintiffs filed *Plaintiffs' Response to Brief of Amici Curiae in Support of State Defendants* on November 28, 2023. On January 30, 2024, State Defendants filed *State Defendants' Notice of Filing Judicially Noticed Documents/Information*. On February 5, 2024, Plaintiffs filed a *Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment*. On February 13, 2024, State


Defendants filed *State Defendants' Response to Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment*. On February 16, 2023, Plaintiffs filed *Plaintiffs' Updated Citations to Legislative Hearing Transcripts in Their Opposition to State's Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment*. On March 18, 2024, the Court filed an Order on *Plaintiffs' Request to Supplement the Record in Support of Plaintiffs' Motion for Summary Judgment and Notice Regarding Plaintiffs Filing of Updated Citations*.

#### D. DESIGNATION OF APPELLANT

In light of the procedural posture of this matter, the Court finds that the Plaintiffs should be designated as the Appellants.

**IT IS THEREFORE ORDERED** that, pursuant to W.R.C.P. 11, the above-stated questions of law are certified to the Wyoming Supreme Court for such further proceedings as the Supreme Court should order.

DATED this 18<sup>th</sup> day of March, 2024.

  
\_\_\_\_\_  
Melissa M. Owens  
District Judge

#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by mail/fax upon the following persons at their last known address this 18 day of MAR 2024.

J. Roberson / M. Bramlet via fax  
P. Modlin / M. Cooney % Roberson Bramlet - Fax  
J. Krole - Fax E. Weisman - Email  
L. Colasvonnio - Fax  
T Szott via email  
F. Harrison - Fax  
D. Harle / T. Garrisa % Harrison via fax

By: Dep Jee Smith  
WY Supreme Court via email + US Mail

*Johnson v. State of Wyoming*  
Civil Action No. 18853

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