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IN THE SUPREME COURT, STATE OF WYOMING

RACHEL RODRIGUEZ-WILLIAMS, House District Representative; CHIP NEIMAN, House District Representative; and RIGHT TO LIFE OF WYOMING, INC., Appellants (Proposed Intervenors), v. 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, Appellees (Plaintiffs), and STATE OF WYOMING; MARK GORDON, Governor of Wyoming; BRIDGET HILL, Attorney General for the State of Wyoming; MATTHEW CARR, Sheriff Teton County; and MICHELE WEBER, Chief of Police, Town of Jackson, Wyoming, Appellees (Defendants).	S-23-0196

BRIEF OF APPELLANTS (PROPOSED INTERVENORS) RACHEL RODRIGUEZ-WILLIAMS, CHIP NEIMAN, AND RIGHT TO LIFE OF WYOMING, INC.

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INTRODUCTION

Last summer, the U.S. Supreme Court returned the issue of abortion to "the people and their elected representatives." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2259 (2022). The people of Wyoming were ready: during the 2023 session, the Legislature passed the Life is a Human Right Act, WYO. STAT. ANN. § 35-6-120–138, which places limits on elective abortions, and a chemical abortion statute, *Id.* § 35-6-139, which governs the use of drugs that cause abortions. Both statutes provide exceptions to preserve the life or health of the mother, for pregnancies resulting from sex crimes, and for tragic situations involving lethal fetal anomalies, ectopic pregnancies, and molar pregnancies.

But before the statutes could go into effect, Plaintiffs brought suit, introducing evidence and arguments purporting to show that the laws would harm women, imperil doctors, and supposedly violate a litany of constitutional rights. In response, existing Defendants, led by the Wyoming Attorney General, mounted a defense on legal grounds alone, failing to introduce factual evidence or arguments to rebut Plaintiffs' submissions. Existing Defendants have persisted in their principled—though, to date, wholly unsuccessful—strategy of providing no evidence for the record, despite this Court's admonition in the predecessor to this case that a limited and one-sided factual record is a problem when deciding major constitutional questions.

The district court relied on Plaintiffs' evidence to grant temporary restraining orders. Appellants sought intervention to rectify the evidentiary gap, and offered to introduce factual evidence supporting the Life is a Human Right Act, but the district court denied that motion. Appellants now ask this Court to reverse the district court's denial of their motion to intervene.

STATEMENT OF JURISDICTION

The trial court had jurisdiction under WYO. STAT. ANN. §§ 1-37-102 and 1-37-103. Appellants moved to intervene, and the trial court denied that motion on July 20, 2023. Wyoming Rules of Appellate Procedure define "[a]n order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment" as an "appealable order." W.R.A.P. 1.05(a). Because the denial of the motion to intervene affects Appellants' substantial rights and determines the action as to them, it is an appealable order. Appellants timely filed their notice of appeal on August 4, 2023, within 30 days of the entry of the appealable order. *See* W.R.A.P. 2.01(a). And this Court docketed the appeal on August 29, 2023.

STATEMENT OF ISSUES

1. Whether two legislators who were the sponsors and legislative architects of a pro-life bill, and who were ardent pro-life advocates in their communities for many years, may intervene as of right in a case challenging that bill's validity where a constitutional provision expressly gave the legislature authority to enact such bills, and the Attorney General has refused to introduce any factual evidence in defense of the bill.

2. Whether a single-issue advocacy organization that has advocated for half a century to protect prenatal human life, and which successfully lobbied for the pro-life legislation at issue, may intervene as of right in a case challenging those bills' validity where the bills' fate may have a substantial effect on the organization's resources and the scope and effectiveness of their advocacy efforts, and where the Attorney General has refused to introduce any factual evidence in defense of the bill.

3. Whether the district court abused its discretion in denying permissive intervention to Appellants when Appellants seek to offer defenses of the challenged bills, including factual evidence, that share a common question of law with the cause of action.

STATEMENT OF THE CASE

I. The Life is a Human Right Act and Chemical Abortion Statute

On June 24, 2022, the United States Supreme Court issued its decision in *Dobbs*, overruling *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania. v. Casey*, 505 U.S. 833 (1992). *Dobbs* held that the United States Constitution "does not confer a right to abortion." 142 S. Ct. at 2279. It also held that "the authority to regulate abortion must be returned to the people and their elected representatives." *Id.*

The Wyoming Legislature passed House Bill 152 ("H.B. 152" or the "Life is a Human Right Act," codified at WYO. STAT. ANN. § 35-6-120–138) and Senate File No. 109 ("S.F. 109" or the "chemical abortion statute," codified at *Id.* § 35-6-139) (together, "the statutes") during the 2023 General Session. In passing the statutes, the legislature chose a policy consistent with Wyoming's long (pre-*Roe*) history and tradition of protecting human life in the womb. Indeed, from the time Wyoming's territorial laws first addressed the issue of abortion—well before Wyoming became a state in 1890—until the state's authority to regulate abortion was usurped by *Roe* in 1973, Wyoming consistently protected unborn human life from abortion. Even after *Roe* greatly constrained state legislatures' ability to regulate abortion, Wyoming's legislature nevertheless protected prenatal life as much as possible—with exceptions for maternal health—right up to the "viability" standard imposed by *Roe*. 1977 WYO. SESS. LAWS ch. 11, §§ 1-2 (codified as WYO. STAT. ANN. § 35-6-102 (1977)).

With *Roe*'s heavy hand removed by *Dobbs*, Wyoming immediately sought to restore its pre-*Roe* protections for the unborn. The Life is a Human Right Act—which passed the Senate by a vote of 25 to 5 and the House by a vote of

49 to 10[1]—provides that, in Wyoming, "no person shall knowingly" administer or prescribe a "medicine, drug or other substance" to cause an abortion or perform a surgical abortion procedure. WYO. STAT. ANN. § 35-6-123. The Life is a Human Right Act specifically excludes from its definition of "abortion" any effort to preserve the life or health of an unborn child, to remove the body of an unborn child who died of natural causes, to treat an ectopic pregnancy, or to provide medical treatment to a pregnant mother that may incidentally injure the unborn child. *Id.* § 35-6-122(a)(i). In addition, the Act excepts from its restrictions any separation procedure to preserve the life or health of a pregnant woman, medical treatment that results in the accidental injury or death or an unborn baby, termination of a pregnancy resulting from sexual assault or incest, or termination of a pregnancy involving a lethal fetal abnormality or a molar pregnancy. *Id.* § 35-6-124.

Accordingly, the Act provides that "abortion as defined in this act is not health care" but rather is an elective and "intentional termination of the life of an unborn baby." *Id.* § 35-6-121(a)(iv).

The chemical abortion statute—which passed the Senate by a vote of 26 to 4 and the House by a vote of 56 to 5[2]—makes it "unlawful to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person." *Id.* § 35-6-139(a). It exempts from its prohibitions any "contraceptive agent administered before conception or before pregnancy can be confirmed," treatment of miscarriage, treatment to preserve

[1] *HB0152 – Life is a Human Right Act*, STATE OF WYOMING LEGISLATURE, https://www.wyoleg.gov/Legislation/2023/HB0152 (last visited Sept. 8, 2023).

[2] *SF0109 – Prohibiting chemical abortions*, STATE OF WYOMING LEGISLATURE, https://www.wyoleg.gov/Legislation/2023/SF0109 (last visited Sept. 8, 2023).

the mother's life or health, and pregnancies resulting from incest or sexual assault. *Id.* § 35-6-139(b).

Both statutes make clear that women upon whom surgical or chemical abortions are performed or attempted are not subject to any penalty. *Id.* §§ 35-6-125; 35-6-139(d).

II. Appellants

A. Right to Life of Wyoming, Inc.

Right to Life of Wyoming is a nonprofit organization, created in 1974 after the upheaval of *Roe* in 1973, whose vision is to "promote a culture of life from conception to natural death."[3] A central focus of Right to Life of Wyoming's mission and purpose is to achieve changes in the law so that prenatal human life is respected. *Id.* It pursues this end by educating citizens on policy issues related to abortion, lobbying government officials, and encouraging civic involvement. Specifically, Right to Life of Wyoming urges citizens to be informed through news and research on matters related to abortion policy, to follow state and federal legislative activity, and to contact state and federal policymakers to share their views.[4] It encourages supporters to engage in peaceful, nonconfrontational demonstrations such as "vigils, marches, and rallies" to raise awareness, to find a "pregnancy center near where you live and volunteer to help save babies' lives and support women in difficult circumstances," and to financially support such organizations. *Id.*

Right to Life of Wyoming has advocated for many pro-life bills since its creation almost half a century ago, but the efficacy of their efforts was almost

[3] *About Us*, RIGHT TO LIFE OF WYOMING, https://www.wyomingrighttolife.com/about_us (last visited Sept. 8, 2023).

[4] *Get Involved*, RIGHT TO LIFE OF WYOMING, https://www.wyomingrighttolife.com/get_involved (last visited Sept. 8, 2023).

entirely constrained by the requirements of *Roe*. After *Dobbs*, however, Right to Life of Wyoming's longstanding support of pro-life efforts and its network of advocates and supporters were instrumental in securing passage of the Life is a Human Right Act. Right to Life of Wyoming has a direct, substantial, and unique interest in seeing the Life is a Human Right Act upheld and seeks intervention in this case to ensure that its advocacy interests on behalf of women and unborn children are not wasted.

B. Rachel Rodriguez-Williams

Rachel Rodriguez-Williams is a member of the Wyoming House of Representatives who represents District 50.[5] She was the prime sponsor of the Life is a Human Right Act and played an integral role in shepherding the law through final passage and enactment.[6] Representative Williams has carried several pro-life bills during her time in the legislature, but her advocacy for the unborn long preceded her work as an elected official.

Ms. Rodriguez-Williams' understanding of the importance of caring for the unborn and their mothers is deeply personal. As a young mother, she was herself the beneficiary of the services and support offered by a pregnancy center during her pregnancy with her son. Ms. Rodriguez-Williams has long volunteered and raised funds and awareness for local pro-life pregnancy resource centers. Advocacy for the unborn is also a family affair: Ms. Rodriguez-Williams and her mother support Serenity Pregnancy Resource Center, which operates in Cody and Powell, Wyoming. Serenity provides free medical services, education, and material support to pregnant women and the

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[5] *House District 50: Representative Rachel Rodriguez-Williams*, STATE OF WYOMING LEGISLATURE, https://wyoleg.gov/Legislators/2023/H/2083 (last visited Sept. 8, 2023).

[6] *HB0152 – Life is a Human Right Act*, STATE OF WYOMING LEGISLATURE, https://www.wyoleg. gov/Legislation/2023/HB0152 (last visited Sept. 8, 2023).

fathers of their babies to help them choose life for their unborn children, as well support services after an abortion.[7] Ms. Rodriguez-Williams eventually became a member of Serenity's board of directors and served as Serenity's executive director from 2017 to 2022.

As a longtime activist in the pro-life movement, Ms. Rodriguez-Williams is well acquainted with, and advocates for, alternatives to abortion like adoption and foster care. Several individuals in her family have been adopted—including her daughter, grandson, and nephew.

Ms. Rodriguez-Williams has been a passionate advocate for protecting the unborn for multiple decades. This advocacy includes her membership in Students for Life of America, which describes itself as "one of the leading pro-life advocacy organizations in the world."[8] As a legislator, Representative Rodriguez-Williams is a member of Susan B. Anthony Pro-Life America's National Pro-Life Women's Caucus, a project that has sought to "identify, organize, and advance women lawmakers" to advocate for legislation that protects the unborn for more than twenty years.[9] She has also attended training at a summit for pro-life legislators conducted by Live Action, a pro-life advocacy organization that publishes a news site on life-related issues, conducts exposé-style investigations of the abortion industry, and seeks to inspire a "macro social movement[] . . . by changing the hearts and minds of

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[7] *Our Story*, SERENITY PREGNANCY RESOURCE CENTER, https://www.serenityprc.org/about-us (last visited Sept. 7, 2023).

[8] *Who We Are*, STUDENTS FOR LIFE OF AMERICA, https://studentsforlife.org/about/who-we-are/, (last visited Sept. 7, 2023).

[9] *National Pro-Life Women's Caucus*, SUSAN B. ANTHONY PRO-LIFE AMERICA, https://sbaprolife.org/about-national-pro-life-womens-caucus (last visited Sept. 7, 2023).

individuals" about abortion.[10] Ms. Rodriguez-Williams is known in her community for her advocacy for the unborn, and—first as executive director for Serenity Pregnancy Resource Center, and now as an elected official—has been a speaker for the cause at countless luncheons, dinners, banquets, fundraisers, and other events where she encourages others to join her efforts.

Representative Rodriguez-Williams has spent years engaged in pro-life advocacy and has a direct, significant, and unique interest in seeing that the laws she sponsored and championed are properly defended and sustained.

C. Chip Neiman

Chip Neiman is also a member of the Wyoming House of Representatives, representing District 1, and serving as the House Majority Floor Leader.[11] He was one of the chief architects and a co-sponsor of the Life is a Human Right Act[12] and, as Floor Leader, also played an integral role in shepherding the law through to final passage and enactment. Like Ms. Rodriguez-Williams, however, in addition to his legislative advocacy, Mr. Neiman has been a pro-life advocate and personal supporter of pro-life pregnancy centers for multiple decades.

Mr. Neiman makes his living as a rancher, but he and his wife donate much of their income to causes that seek to serve and protect pregnant women and their unborn children. Mr. and Mrs. Neiman committed early in their marriage—which began in 1991—to contribute their financial resources and

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[10] *Our Work*, LIVE ACTION, https://www.liveaction.org/what-we-do/our-work/ (last visited Sept. 8, 2023).

[11] *House District 01: Representative Chip Neiman*, STATE OF WYOMING 67TH LEGISLATURE, https://wyoleg.gov/Legislators/2023/H/2070 (last visited Sept. 8, 2023).

[12] *HB0152 – Life is a Human Right Act*, STATE OF WYOMING 67TH LEGISLATURE, https://www.wyoleg.gov/Legislation/2023/HB0152 (last visited Sept. 8, 2023).

volunteer labor to support pregnant women and their unborn children, as well as orphans, and together they have given hundreds of thousands of dollars from their personal assets to these causes. Mr. Neiman is a longtime financial supporter of pregnancy resource centers in Wyoming and in nearby Spearfish, South Dakota.

Mr. Neiman's commitment to protecting children has extended to giving to and working with nonprofit organizations that support adoption and foster care and provide orphan care both in the United States and abroad. Mr. Neiman and other members of his household give and work with Christian ministries that build orphanages and provide education to protect orphans from human traffickers and help them mature into healthy adults and have personally traveled to Chile and Sri Lanka to support such work.

Like Representative Rodriguez-Williams, because of his decades of advocacy to protect children—especially unborn children—Representative Neiman has a direct, significant, and unique interest in seeing that the laws whose passage he sponsored and supported and by extension, the Legislature's authority to regulate on matters of health and safety, is not discarded but rather sustained and enforced.

Both representatives were elected on campaign platforms that prominently featured their advocacy for and commitment to protecting the unborn and the Life is a Human Right Act was their signature achievement. Both have a particular interest in ensuring that their constituents' permissible pro-life policy preferences—duly enacted by the Legislature—are given effect.

III. Procedural History

A. *Johnson v. Wyoming I*

The people of Wyoming have been eager to exercise their authority on abortion policy, even before *Dobbs* reversed *Roe* and returned the issue to "the people and their elected representatives." 142 S. Ct. at 2259. During the 2022 Budget Session, Representatives Rodriguez-Williams and Neiman sponsored—and the Legislature passed with large majorities in both chambers—House Bill 92, which limited elective abortions, with exceptions for pregnancies resulting from a crime, and excepting pregnancy terminations when the life or health of the mother is endangered.[13]

Before House Bill 92 could go into effect, however, Plaintiffs brought suit in Civil Case No. 18732, challenging the law under various theories. Compl. for Decl. Judgement [sic] and Injunctive Relief, *Johnson v. State*, No. 18732 (Wyo. Dist. July 25, 2022) ("*Johnson I*"). As part of their challenge, Plaintiffs introduced evidence purporting to show that the law would harm women, imperil doctors, and violate a host of constitutional rights. In response, the Wyoming Attorney General mounted a defense, but on legal grounds alone; the defense did not include factual evidence or arguments to rebut Plaintiffs' submissions, submissions on which the trial court relied in granting a temporary restraining order and then a preliminary injunction.

When it became apparent that the *Johnson I* Defendants would not adequately defend their interests and would allow evidence proffered by Plaintiffs to go unchallenged, Appellants moved to intervene. Plaintiffs opposed; Defendants did not oppose Appellants' intervention but made clear

[13] House Bill 92 passed the Senate by a vote of 24 to 5, and the House by a vote of 45 to 14. *HB0092 – Abortion Prohibition, Supreme Court Decision*, STATE OF WYOMING 67TH LEGISLATURE, https://www.wyoleg.gov/Legislation/2022/HB0092 (last visited Sept. 8, 2023).

they opposed Appellants' plans to introduce evidence to counter that provided by Plaintiffs.

After a hearing, the District Court denied Appellants' motion to intervene, concluding that Rodriguez-Williams and Neiman's interests were mere "personal beliefs and vocations," and "not different from any Wyoming citizen's interest in seeing legislation enacted that promotes the health, welfare, and safety of Wyoming citizens." Order on Mot. to Intervene at ¶¶ 22–23, *Johnson I*, No. 18732. Dismissing a half century of dedicated single-issue political and legislative advocacy, the court also found Right to Life of Wyoming's interests in the litigation were "similar to that of any other member of the public." *Id.* ¶ 25.

On the same day the district court denied Appellants' motion to intervene, it certified twelve questions of law to this Court. Certification Order, *Johnson I*, No. 18732. This Court declined to answer the certified questions. Notice of Declination to Answer Certified Questions, *Johnson v. State*, No. S-22-0294 (Wyo. Dec. 20, 2022). This Court explained that it could not "answer all twelve certified questions *on the limited factual record provided*." *Id.* (emphasis added).

In 2023, the Wyoming Legislature sought to remedy the alleged problems with House Bill 92, repealed that statute and enacted instead the Life is a Human Right Act and the chemical abortion statute.

B. *Johnson v. Wyoming II*

After the 2023 statutes were duly passed by Wyoming's elected representatives, but before the bills could even be assigned code sections, Plaintiffs again filed a new complaint. R. at 001-34. This complaint initiated Civil Case No. 18853 ("*Johnson II*") and sought declaratory and injunctive relief from H.B. 152. *Id.* Plaintiffs amended their complaint on March 21 to

add a request for relief from S.F. 109. R. at 329-65. Plaintiffs contend that the statutes violate numerous provisions of the Wyoming Constitution even though no Wyoming court has ever held that *any* constitutional provision confers a right to abortion.

On the same day as their original complaint, Plaintiffs also filed a Motion for Temporary Restraining Order against the Life is a Human Right Act, accompanied by several affidavits. The State Defendants opposed the motion but provided no affidavits or other evidence to counter Plaintiffs' submissions. At a hearing on March 22, 2023, the district court imposed a temporary restraining order from the bench. The district court later issued a written order citing Plaintiffs' "ample evidence" in support of their motion for a temporary restraining order. R. at 739.

On May 11, 2023, Plaintiffs sought another temporary restraining order, this time against the chemical abortion statute. As with the first temporary restraining order, Plaintiffs supported their motion with evidence in the form of affidavits and statistical information. State Defendants also opposed this temporary restraining order, but provided only legal arguments and did not attempt to counter Plaintiffs' evidence. Again, the district court granted the Plaintiffs' petition and imposed a temporary restraining order.

IV. The Motion to Intervene

Appellants moved to intervene in *Johnson II* on April 6, 2023, noting the incomplete and wholly one-sided evidentiary record in both cases, and this Court's refusal to consider *Johnson I* because of its limited factual record. Again, Plaintiffs opposed intervention. Appellants argued that they satisfied Rule 24's requirements for intervention as of right. First, Right to Life of Wyoming has significant protectable interests, which include its organizational resources devoted to ensuring that pregnant women and

unborn children are protected in law, and vindicating its advocacy achievements, a half-century in the making. Rodriguez-Williams and Neiman also asserted significant protectable interests, including (1) vindicating their decades of individual efforts advocating for protections for the unborn; (2) protecting the legislature's authority to regulate for health and safety, which is expressly enumerated in one of the Wyoming constitutional provisions Plaintiffs claim guarantee abortion on demand; (3) ensuring the health and safety of women and unborn children; and (4) vindicating the democratically-enacted will of Wyomingites.

Second, the disposition of this case may impair Appellants' ability to protect their interests: if Plaintiffs establish a previously unknown constitutional right to elective abortion, it will greatly constrain the Legislators' authority to pass reasonable laws protecting prenatal life and maternal health, and massively impair the scope and efficacy of Right to Life of Wyoming's advocacy.

Third, State Defendants do not adequately represent Appellants' interests because they have refused to introduce evidence in defense of the law and to rebut Plaintiffs' evidence already in the record. In fact, the Attorney General actively *resists* Appellants' attempts to introduce either supportive evidence or evidence that conflicts with Plaintiffs' evidence. While the State Defendants did not oppose Appellants' intervention, they reiterated their (thus far unsuccessful) argument that the statutes should remain in effect as a matter of law, without consideration of Plaintiffs' evidence or any evidence to the contrary. R. at 846 ("State Defendants do not oppose the intervention of [Appellants], but do not agree with [their] apparent belief that this Court should hold an evidentiary hearing or formal trial in this case.").

In the alternative, Appellants argued that they should be granted permissive intervention because their defenses have an obvious question of fact or law in common with the main action and because intervention would not unduly delay or prejudice the adjudications of the rights of the original parties.

As in *Johnson I*, the district court again cited the permissive, liberal standards for intervention, but held that Appellants' decades of pro-life advocacy and specific work on these statutes was insufficient to give them standing as intervenors, instead finding that their interests were no different from the public at large. R. at 1342-43. Despite this Court's order regarding the limited factual record in *Johnson I*, Appellants' offer to provide evidence, and State Defendants' refusal to provide evidence, the district court still found that State Defendants adequately represented Appellants' interests. R. at 1343-46. Appellants now appeal that ruling.

ARGUMENT

I. The trial court erred when it denied Appellants' intervention as of right under W.R.C.P. 24.

Under Wyoming Rule of Civil Procedure 24, a trial court "must permit anyone to intervene who" (1) files a timely motion; (2) "claims an interest relating to the property or transaction that is the subject of the action"; (3) "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest"; and (4) is not "adequately represent[ed]" by existing parties. W.R.C.P. 24(a)(2); *Kerbs v. Kerbs*, 2020 WY 92, ¶ 12. The trial court's determination of timeliness is reviewed for abuse of discretion; the remaining elements should be reviewed de novo. *Hirshberg v. Coon*, 2012 WY 5 ¶ 9. Because Appellants met that standard, the trial court's order denying intervention should be reversed.

A. Appellants have significant protectable interests in this matter.

A proposed intervenor must show a "significant protectable interest" in the matter, *Platte Cnty. Sch. Dist. No. 1 v. Basin Elec. Power Co-op.*, 638 P.2d 1276, 1279 (Wyo. 1982) (citing *Donaldson v. United States*, 400 U.S. 517 (1971)), which simply means "an interest that could be adversely affected by the litigation." *Kane Cnty. v. United States*, 928 F.3d 877, 891 (10th Cir. 2019). Here both the Legislators and Right to Life of Wyoming have significant protectable interests in defending the statutes.

1. Right to Life of Wyoming has significant protectable interests in ensuring that pregnant women and unborn children are protected in law, preventing waste of their organizational resources, and preserving long-sought advocacy achievements.

Right to Life of Wyoming's core purpose is to educate the public on the value of human life—including the harms of abortion—and to advocate for laws that protect pregnant women and their unborn children. All of the organization's resources are dedicated to this mission. Indeed, Right to Life of Wyoming devoted substantial time, funds, and other resources in specifically lobbying and advocating for the statutes challenged in this case. Thus, its interest is greatly distinguishable from members of the public. The fates of these statutes are mission-critical to Right to Life of Wyoming's efficacy.

Cases in which courts granted intervention to advocacy or lobbying groups show why Right to Life of Wyoming is entitled to intervention here. For instance, in *Coal. of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of Interior* the Tenth Circuit held that a retired emergency room physician who was also a wildlife photographer, amateur biologist, and naturalist who had photographed and studied the Mexican spotted owl and lobbied for its protection had a "direct, substantial, and legally protectable"

interest sufficient for intervention in a case brought under the Endangered Species Act. 100 F.3d 837, 841 (10th Cir. 1996). The court assessed a proposed intervenor's years of advocacy for the subject matter at issue in that litigation:

> We are not faced . . . with an applicant who has no interest . . . other than prior litigation involving the same subject matter. Instead, Dr. Silver has been directly involved with the Owl as a wildlife photographer, an amateur biologist, and a naturalist who has photographed and studied the Owl in its natural environment. . . . Silver had little economic interest in the Owl; however, economic interest is not the sine qua non of the interest analysis for intervention as of right. To limit intervention to situations where the applicant can show an economic interest would impermissibly narrow the *broad right of intervention* enacted by Congress and recognized by the courts. . . . *Silver's involvement with the Owl in the wild and his persistent record of advocacy for its protection amounts to a direct and substantial interest in the listing of the Owl for the purpose of intervention as of right*.

Id. at 841 (emphases added). Although a separate federal statute did grant the owl photographer the right to intervene, that was not the basis of the Tenth Circuit's decision. Rather, the court held that the photographer's "*involvement* with the Owl . . . and his *persistent record of advocacy for its protection* amounts to a direct and substantial interest in the listing of the Owl for the purpose of intervention as of right." *Id.* (emphases added).

Similarly, in *Wash. State Bldg. & Construction Trades Council, AFL-CIO v. Spellman*, the Ninth Circuit permitted a public interest group that sponsored a statute as a ballot initiative to intervene as of right in an action challenging the measure's constitutionality. 684 F.2d 627, 630 (9th Cir. 1982). And in *Planned Parenthood v. Citizens for Community Action*, the Eighth Circuit held that a neighborhood association whose "purpose . . . [was] to preserve property values and ensure that abortion facilities do not affect the health, welfare and safety of citizens" had a right to intervene in a challenge

to a local law that imposed a moratorium on the construction of abortion clinics. 558 F.2d 861, 869 (8th Cir. 1977).

The Tenth Circuit held that an amateur biologist has a right to intervene to defend the life of an owl he lobbied for *five years* to protect. *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 839. Accordingly, a single-issue nonprofit organization that has dedicated *five decades* of advocacy since the 1973 *Roe* decision to organize, educate, and lobby for this type of legislation surely has a right to intervene to protect unborn human life and defend these statutes. Plaintiffs' case—by positing that an amalgam of Wyoming laws and constitutional provisions somehow create a state right to abortion that nullifies the Legislature's right to protect innocent, unborn life—threatens to undo all of Right to Life of Wyoming's hard-won achievements in one fell swoop. Indeed, much like the intervenors in *Coalition of Arizona*, *Spellman*, and *Citizens for Community Action*, Right to Life of Wyoming's advocacy efforts and all it has achieved are at stake and will likely rise or fall with the court's ruling on whether the Wyoming Constitution guarantees a right to elective abortion. Right to Life of Wyoming's interest is therefore not only significant but "direct, substantial, and legally protectable." *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 84.

2. The Legislators have significant protectable interests in protecting the Legislature's authority to regulate for health and safety and in ensuring that women and unborn children are protected in law.

Dobbs "return[ed] the issue of abortion to the people's elected representatives." 142 S. Ct. at 2243. The Court held that "the Constitution and the rule of law demand" that "the permissibility of abortion" is "to be resolved . . . by citizens trying to persuade one another and then voting." *Id.* The citizens of Wyoming did just that: through their elected representatives, they enacted

these statutes, which limit elective abortion except in certain cases. The statutes serve the "legitimate state interests" of preserving "prenatal life," protecting "maternal health and safety," eliminating "barbaric medical procedures," and preserving "the integrity of the medical profession." *Id.* at 2284.

Representatives Rodriguez-Williams and Neiman were the lead sponsor and the chief legislative shepherd of the statutes, respectively. They have a significant interest in protecting the Legislature's authority to enact such laws. *See* WYO. CONST. art. III (granting the legislature the authority to make laws); *see also Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) (granting intervention to public interest group that had sponsored the challenged ballot initiative). Moreover, one of the sections of the Wyoming Constitution upon which Plaintiffs rely for their "fundamental right" to abortion specifically grants the Legislature the power to "determine reasonable and necessary restrictions on the rights granted under this section to protect the health and general welfare of the people." WYO. CONST. art. I, § 38(c). In other words, Plaintiffs' action not only threatens the Wyoming Legislature's long-awaited authority to reasonably regulate abortion, but it does so by rejecting a separate constitutional *grant* of authority to the Legislature to regulate health and general welfare.

The U.S. Supreme Court confronted a similar situation in *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191 (2022). There, two legislative leaders intervened to defend North Carolina's voter identification law. *Id.* at 2198–99. The district court denied the legislators' motion to intervene because it believed the legislators would be adequately represented by the state Attorney General. *Id.* at 2199. But the U.S. Supreme Court reversed. *Id.* at 2206. In doing so, the Court noted that the Attorney

General had not "produce[d] competing expert reports," but had "supplied a single affidavit form its executive director . . . stress[ing] . . . the need for clarity about which law to apply." *Id.* at 2199. This meant that the legislators were *not* adequately represented and that intervention should have been allowed.

Similarly, the Legislators here have an interest in presenting evidence in defense of the statutes they enacted when the State Defendants refuse to do so. Plaintiffs assert that *Berger* allows legislative intervention "only where a statute itself provides a legally protectible interest." R. at 765, 793. But *Berger* does not rely exclusively on North Carolina's express authorization of legislative intervention. Instead, the Court explained that "no one questions that States may organize themselves in a variety of ways." *Berger*, 142 S. Ct. at 2201. Where, as here, the Attorney General does not oppose intervention, there is no reason to deny state legislators the ability to defend the law.

These particular Legislators have an especially strong interest in defending the statutes, beyond their roles as lead sponsor and floor leader. Both Representatives Neiman and Rodriguez-Williams have decades-long personal histories of public pro-life advocacy in their communities. Both ran on pro-life campaign platforms and committed their legislative effort to this crucial policy achievement. The Legislators should be allowed to preserve these interests by defending the law that they worked so hard to enact.

B. The disposition of this case may impair Appellants' ability to protect their interests.

Satisfying the impairment factor is not a heavy lift. A proposed intervenor "must show *only* that impairment of its substantial legal interest is *possible* if intervention is denied. This burden is minimal." *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1123 (10th Cir. 2019) (emphasis added). Appellants have made that minimal showing here.

This case will determine whether the Legislators can enact pro-life laws and whether Right to Life of Wyoming is able to successfully advocate for pro-life laws. As explained above, *see supra* Part I.A.2, this case directly challenges the Legislators' authority to pass reasonable laws protecting life and health by legislating as expressly permitted by Art. I, Sec. 38(c) of the Wyoming Constitution. If the statutes are permanently enjoined, especially on the grounds that the Wyoming Constitution includes a right to abortion, the Legislators' ability to limit the harms of abortion may be greatly impaired. Despite *Dobbs*, the longstanding history of Wyoming laws protecting unborn life, and the clear policy preferences of Wyoming voters, Wyoming legislators and the people that elect them would be unable to protect life. The Legislators therefore pass the impairment test. *See, e.g.*, *W. Watersheds Project v. U.S. Forest Serv. Chief*, No. 20-cv-67-F, 2020 WL 13065066, at *3 (D. Wyo. July 29, 2020) (holding that a group of outfitters showed impairment because the underlying action threatened to stop the supplemental feeding of elk, which could lead to the elk's starvation or movement elsewhere, thereby damaging the groups' use of "elk for aesthetic, conservation, and economic purposes"); *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (factor satisfied because, if plaintiff prevailed, intervenor's "interest in conserving and enjoying wilderness in the Study Area may . . . be impaired").

Similarly, the outcome will determine whether Right to Life of Wyoming will be able to meaningfully advocate for pro-life laws, or whether its efforts will be futile. If the statutes are struck down under a novel interpretation of the Wyoming Constitution to include a right to abortion, Right to Life of Wyoming's substantial expenditure of time and resources supporting the statutes will be for naught. Further, its future issue advocacy under a new constitutional regime would be more costly and difficult.

Given their unique interests in protecting life and the existential threat to these rights posed by Plaintiffs' arguments for a constitutional right to abortion, not to mention their substantial investment of time and resources, the Legislators and Right to Life of Wyoming may suffer impairment based on the outcome of this case. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (holding that intervenor wildlife organization had established impairment where it had participated in administrative process to create conservation area being challenged); *see also Idaho v. Freeman*, 625 F.2d 886 (9th Cir. 1980) (holding that National Organization for Women had right to intervene in suit challenging procedures for ratification of proposed Equal Rights Amendment, which cause organization had championed).

C. Existing Defendants do not adequately represent Appellants' unique interests.

Similarly, the Legislators and Right to Life of Wyoming's interests are not adequately represented by the existing Defendants. Courts look to three factors to determine whether a proposed intervenor's interests are adequately represented by an existing party:

> 1) whether the interest of a present party is such that the party will undoubtedly raise the same arguments as the intervenor; 2) whether the present party is capable *and willing* to make such arguments; and 3) whether the intervenor would offer any necessary elements to the proceedings that the existing parties would neglect.

Concerned Citizens of Spring Creek Ranch v. Tips Up, LLC, 2008 WY 64, ¶ 20, (emphasis added) (quoting *Or. Env't Council v. Or. Dep't of Env't Quality*, 775 F. Supp. 353, 358–59 (D. Or. 1991)). Parties seeking to intervene need only "show that [their] interest *may not be* adequately represented." *Concerned Citizens*, 2008 WY 64, ¶ 20,**Error! Bookmark not defined.** (emphasis added)

(citing *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001)). All three factors support a finding of inadequate representation here.

In *Northfork Citizens for Responsible Development v. Board of County Commissioners of Park County*, for example, an organization of concerned citizens and two neighboring residents sought to intervene in a challenge to a board of county commissioners' approval of the development of a residential subdivision. 2010 WY 41, ¶ 1, ¶ 11. The trial court denied Northfork's motion to intervene, holding that the board, as a government entity, adequately represented the interests of the concerned citizens. *Id.* ¶ 14. This Court reversed, noting the board had resisted Northfork's participation in the approval process and holding the board did not adequately represent Northfork's interests. *Id.* ¶ 56. Specifically, this Court held that Northfork "had particularized and protectable interests in the development, which interests do not appear from the record to have been shared by, no less championed by, the Board." *Id.* Similarly, State Defendants in this case simply do not share Appellants' interest in protecting the fruits of decades of advocacy for this type of legislation.

Similarly, here, while the State has stopped short of opposing intervention, the State Defendants have stated their disagreement with Appellants' desire to protect their interests by contributing to the evidentiary record and rebutting Plaintiffs' factual submissions. Existing Defendants disagree with Appellants' intent to participate in an evidentiary hearing, insisting that "an evidentiary hearing or a formal trial is at odds with the nature of the issues in this case," R. at 846, and that they "do oppose [the trial court] granting them intervention based on the premise that such a hearing or trial is necessary," R. at 854. Just as the board in *Northfork Citizens* did not adequately represent the interests of Northfork—even though they would have

been on the same side of the case—the Attorney General does not adequately represent the interests of Appellants here.

1. Existing Defendants will not "undoubtedly raise the same arguments" as Appellants.

Existing Defendants have refused to raise the same specific factual arguments that Appellants would.[14] Indeed, as things stand now, *none* of Plaintiffs' factual submissions have been rebutted with contrary evidence. That discrepancy alone shows that the Appellants' interests are not adequately represented by the State. *See* 6 Edward J. Brunet, *Moore's Federal Practice* § 24.03[4][a] (3d ed. 1997) (a proposed intervenor "should be treated as the best judge of whether the existing parties adequately represent . . . [its] interests, and . . . any doubt regarding adequacy of representation should be resolved in [its] favor"); *see also In Def. of Animals v. U.S. Dep't of the Interior*, No. 2:10-cv-1852, 2011 WL 1085991, at *3 (E.D. Cal. Mar. 21, 2011) ("Any doubt as to whether the existing parties will adequately represent the intervenor should be resolved in favor of intervention.").

This discrepancy is significant. The trial court has already relied on Plaintiffs' uncontested evidence in its orders granting a preliminary injunction in *Johnson I* and temporary restraining orders in both *Johnson I* and *II*. For instance, the trial court found that Plaintiffs "provided ample evidence in their affidavits that abortions are utilized by medical professionals to restore and maintain the health of their patients," R. at 739, and that "Plaintiffs have made a sufficient showing that an abortion constitutes health care under article 1,

[14] Appellants also note that, while remaining true to their conviction that they should not be obliged to submit evidence, existing Defendants have lost every pretrial issue in this case and its predecessor.

section 38." R. at 742. Appellants will offer specific evidence to counter those findings. *See infra* Part I.C.3.

This high-profile case raises questions of first impression and should be considered only on a complete and balanced evidentiary record. Appellants' interests are not adequately represented by the State.

2. Existing Defendants will not make the arguments Appellants plan to make.

In *Johnson I*, the Attorney General represented to the trial court that she was unsure whether she would proffer any evidence at trial. *See* Tr. on Hr'g for TRO (July 27, 2022) at 4 (suggesting that the Court would "rely on [Plaintiffs'] affidavits," the Attorney General had "no objection" to their consideration and revealing she had introduced no affidavits of her own). At the preliminary injunction hearing, counsel for the State represented that "these are questions of law and evidence isn't necessary to resolve them" and that "the state defendants fully intend to participate in [an] evidentiary hearing," but the State is unsure "what that participation will look like." Prelim. Inj. Hr'g Tr. 29:22–24, 30:17–20.

Despite losing every contested issue and this Court's expressed desire for a fuller factual record in *Johnson I*, State Defendants have dug in their heels on the issue of providing evidence in *Johnson II*. The district court specifically confronted State Defendants about this issue several months ago:

> My concern is there was a statement in the state defendants' briefing that this is solely a question of constitutional law and that there is not in any way a factual question. However, when this Court previously tried to certify the other law the Supreme Court kicked it back and said we won't review this law because . . . there are not enough facts for us to review, the facts have not been developed enough. So, clearly this Court's required to look at some facts.

Tr. on Hr'g for TRO (Mar. 22, 2023) at 47:6–14. More recently, the district court again reiterated the need for factual evidence in this case when it ordered State Defendants to comply with Plaintiff's motion for discovery:

> The Court finds that the remaining factors weigh in favor of the discovery given the important constitutional issues at stake in this action that are all issues of first impression. The Court finds that the Attorney General of Wyoming is in the position to defend the constitutionality of the statutes. . . . The discovery directly relates to the *factual basis necessary to support the claims and defenses asserted in this matter*. . . .

R. at 1527.

But in every filing and every hearing, State Defendants persist in their position that this case presents only questions of law. Even though Plaintiffs are filling the record with evidence to support their arguments, State Defendants insist that the only course they intend to take is their principled—and losing—decision to forgo evidence in their defense of the statutes. *See*, *e.g.*, R. at 1293 ("[T]he claims in this case involve only questions of law, and the information sought . . . does not tend to make the existence of any fact that is consequential to the determination of the action more or less probable than it would be without the information sought."); R. at 849 ("Facts or circumstances arising after the adoption of section 38 and the enactment of the Life Act and the chemical abortion statute are not legally relevant to this Court's analysis of the facial constitutionality of the challenged statutes.").

These representations alone are enough to satisfy this factor. *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 824 (9th Cir. 2001) ("It is sufficient for Applicants to show that, because of the difference in interests, it is likely that Defendants will not advance the same arguments as Applicants."). And as discussed above, there is currently no rebuttal evidence on the record to counter the alleged harm, vagueness, and health care decision

making arguments raised by Plaintiffs and credited by the district court. Unless Appellants are granted intervention, there may not be any at the trial either. This evidentiary gap bolsters the conclusion that State Defendants will not "raise the same arguments" as Appellants. *See Concerned Citizens*, 2008 WY 64, ¶ 20.

3. Appellants will offer necessary elements not offered by State Defendants.

Appellants ask to introduce evidence to counter Plaintiffs' heretofore unchallenged evidence. For example, contrary to Plaintiffs' claim that elective abortion is "health care," a 2013 survey found that only 6% of women seeking abortions do so for health reasons.[15] Appellants intend to introduce evidence that each of the health care provider and maternal health concerns propounded by Plaintiffs are accommodated by exceptions provided in the statutes. Moreover, Appellants would provide evidence that the statutes are rationally related to the constitutional grant of authority to the legislature to "determine reasonably and necessary restrictions on the rights granted under [Art. I, § 38] to protect the health and general welfare of the people." WYO. CONST. art. I, § 38(c). For example, a study from the British Medical Journal found that Mexican states with less permissive abortion laws had significantly lower maternal mortality rates than states with more permissive laws.[16] Appellants intend to submit expert testimony about these facts.

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[15] M. Biggs et al., *Understanding why women seek abortion in the US*, 13 BMC Women's Health, 6 (Table 2) (2013), https://bmcwomenshealth.biomedcentral.com/articles/10.1186/1472-6874-13-29.

[16] E. Koch et al., *Abortion legislation, maternal healthcare, fertility, female literacy, sanitation, violence against women and maternal deaths: a natural experiment in 32 Mexican states*, BMJ Open at 20 (Feb. 23, 2015), https://bmjopen.bmj.com/content/bmjopen/5/2/e006013.full.pdf.

In addition, Appellants plan to introduce evidence that, in contrast to Plaintiffs' assertions, abortion *negatively* impacts a woman's physical, mental, and emotional well-being. For example, a report from the U.S. Centers for Disease Control found that abortion caused 519 women's deaths from 1973 to 2017.[17] Even when the woman survives the abortion, a study performed by the FDA found that 5.6% of women who have surgical abortions and 20% of women who have chemical abortions experience complications.[18] And a 2011 study found that a least one third of women experience depression, fear of infertility, abnormal eating behaviors, decreased self-esteem, nightmares, guilt, or regret after the abortion.[19] A study of more than 42,000 women in Finland showed that adverse events were four times more common in women who underwent chemical abortions when compared with the surgical abortion cohort, including much higher incidences of hemorrhaging and incomplete abortions, requiring a significantly higher rate of subsequent surgical evacuation.[20] Once again, Appellants plan to introduce expert testimony to discuss these facts.

Appellants also plan to introduce evidence that the state has an interest in protecting fetal life *even if the child may die soon after birth*. A recent study showed that infants born with Trisomy 13 and 18, previously considered

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[17] K. Kortsmit et al., *Abortion Surveillance — United States, 2018*, 69 CENTERS FOR DISEASE CONTROL AND PREVENTION MORBIDITY AND MORTALITY WEEKLY REPORT 29 (Table 14) (2020).

[18] Christopher M. Gacek, *RU-486 (Mifepristone) Side-Effects 2000–2012*, at 4, FAMILY RESEARCH COUNCIL, https://downloads.frc.org/EF/EF12F08.pdf. (Last visited Sept. 9, 2023)

[19] Abolghasem Pourreza & Aziz Batebi, *Psychological Consequences of Abortion among the Post-Abortion Care Seeking Women in Tehran*, IRANIAN JOURNAL OF PSYCHIATRY, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3395931/. (Last visited Sept. 9, 2023)

[20] Maarit Niinimäki, et al., *Immediate complications after medical compared with surgical termination of pregnancy*, 114 Obstetrics and Gynecology 4 (2009).

incompatible with life had better chances of survival with heart surgery.[21] Dr. Thomas Collins, who performed the study, stated that "We base our life span estimates mainly on the natural, un-operated history [of infants with these birth defects]," but "[w]e don't know what the life span would be if we addressed their issues."[22]

Appellants intend to offer expert testimony to rebut assertions in Plaintiffs' affidavits.[23] For example, Appellants are prepared to present testimony from physicians who specialize in obstetrics and gynecology with decades of medical practice, experience delivering tens of thousands of babies and treating thousands of post-abortive women, and familiarity with current research on matters relevant to the abortion regulations at issue in this case. Such experts would provide testimony that refutes Plaintiffs' assertions that the statutes, even with their robust exceptions for the life and the health of the mother, prevent physicians from providing medical care when patients' lives are threatened or require physicians to wait until a woman is seriously ill before intervening. They would additionally testify that pre-viability medically indicated separations are rare. Most serious pregnancy complications occur in the second half of pregnancy, during which time most unborn babies achieve

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[21] Aylin Woodward, *Newborns with trisomy 13 or 18 can benefit from heart surgery*, STANFORD MEDICINE NEWS CENTER (Oct. 17, 2017), https://med.stanford.edu/news/all-news/2017/10/newborns-with-trisomy-13-or-18-benefit-from-heart-surgery.html.

[22] Erin Digitale, *Compatible with life? Doctors and families grapple with what's next when a severe genetic disorder is diagnosed during pregnancy*, Stanford Medicine Magazine (Nov. 19, 2018), https://stanmed.stanford.edu/genetic-disorders-incompatible-life-options/#:~:text=Trisomy%2018%20and%20a%20similar, both%20diagnoses%20are%20equally%20poor.

[23] Affidavits from expert witnesses substantiating these proffers of evidence were executed in support of Appellants' attempt to provide an amicus brief to assist the district court in the matter of Plaintiffs' request for a temporary restraining order. *See* R. at 460-65.

viability. Accordingly, pregnancy complications requiring intervention to address serious health concerns for the mother can often be addressed by delivering the infant via cesarean section or inducing labor, thereby addressing the maternal health concern, and giving the baby the best opportunity for survival.

These experts would further address how the statutes permit physicians to address maternal health issues such as hypertension (preeclampsia or eclampsia), previable

premature rupture of membranes, maternal heart disease, placenta accreta spectrum, non-pregnancy-related critical illness, and cancer. Appellants' experts would address Plaintiffs' assertions that women who are denied abortion have poor mental health and economic outcomes by showing that these outcomes are more closely related to the women's pre-existing economic status than the outcome of their pregnancies. Appellants' experts would provide context for Plaintiffs' assertions that abortion is safer than childbirth by showing that such claims come from researchers associated with the abortion industry, and that evidence shows post-abortive women have higher age-adjusted risks of death from all causes compared to those who gave birth.

Finally, Appellants' experts would address and provide alternative views from those provided by Plaintiffs regarding the impact of abortion regulation on women who suffer from domestic abuse and other criminal circumstances, and on the availability of reproductive health care providers. This evidence is necessary for the trial court to make a fully informed ruling on Plaintiffs' complaint, and for this Court to have a complete factual record when considering the appeal that will inevitably follow.

Appellants plan to offer expert and lay witness testimony on these facts. Because Appellants intend to proffer evidence that State Defendants do not, their interests are not adequately represented by the Attorney General.

D. The motion to intervene was timely.

The trial court correctly held that "[Appellants] promptly moved to intervene" and found that "the element of timeliness is satisfied in this case." R. at 1339. Because the parties did not challenge the timeliness of Appellants' motion to intervene below, they may not do so here. *See Robinson v. State*, 2019 WY 125, ¶ 18 ("[O]nly arguments made to the district court may be presented on appeal."). Therefore, this Court should affirm the trial court's holding that Appellants' motion was timely.

II. The trial court abused its discretion when it denied Appellants' petition for permissive intervention.

Alternatively, Appellants should have been granted permissive intervention. A court may grant permissive intervention to "anyone . . . who . . . has a claim or defense that shares with the main action a common question of law or fact." W.R.C.P. 24(b)(1)(B); *Kerbs*, 2020 WY at 92, ¶ 12. An appellate court "reviews the district court's denial of a motion for permissive intervention for an abuse of discretion." *Hirshberg*, 2012 WY 5, ¶ 9.

"Intervention may be allowed permissively when the intervenor's claim or defense has a question of fact or law in common with the main action and the court in its discretion determines intervention will not unduly delay or prejudice the adjudications of the rights of the original parties." *Masinter v. Markstein*, 2002 WY 64, ¶ 6 (citing W.R.C.P. 24(b)(2)). Appellants share a question of law in common with the main action, namely, whether the statutes violate the Wyoming Constitution.

Moreover, allowing Appellants to intervene would not unduly delay this case. Appellants are prepared to abide by the trial court's scheduling order, including timely participation in discovery or trial. Appellants' participation would facilitate the timely and effective disposition of this case by obviating the need for successive appeals and ensuring that the trial court and this Court have a full record before they consider the case's merits.

The trial court abused its discretion by failing to allow Appellants to intervene. The trial court denied permissive intervention for two reasons. First, it held that "the State Defendants are adequately representing the interests of [Appellants]." R. at 1346. This is not the proper test. Permissive intervention does not require proposed intervenors to show a lack of adequate representation. Regardless, as explained at length above, *see supra* Part I.C., Appellants' interests are *not* adequately represented by the State Defendants.

Second, the trial court held that "the intervention of [Appellants] will unduly delay and prejudice the adjudication of the rights in this matter" because "the addition of [Appellants] into this litigation risks duplicating the presentation of the defense in this matter and risks the presentation of cumulative argument." R. at 1346-47. This circumstance creates no risk of duplication, however, as Appellants merely wish to provide the court with evidence State Defendants have repeatedly stated and shown they are determined to avoid presenting. Thus, neither of the trial court's articulated reasons justifies denial of permissive intervention.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's denial of the Legislators and Right to Life of Wyoming's motion to intervene.

Respectfully submitted this 15th day of September 2023.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellants (Proposed Intervenors) Rachel Rodriguez-Williams, Chip Neiman, and Right to Life of Wyoming, Inc. was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System (CTEF) to the following:

> Mr. John H. Robinson/Ms. Marci C. Bramlet, Attorneys for the Plaintiffs
> Mr. Jay A. Jerde, Attorney for Defendants Governor Gordon, Attorney General Bridget L. Hill, State of Wyoming
> Ms. Lea M. Colasuonno, Attorney for Defendant Michelle Weber, Chief of Police, Town of Jackson, Wyoming
> Ms. Erin E. Weisman, Attorney for Defendant Sheriff Matthew Carr, Teton County, Wyoming.

The original paper copy plus six copies of the foregoing document were hand-delivered by me to the Clerk of the Wyoming Supreme Court this 15th day of September, 2023.

I have accepted the terms for e-filing and hereby certify the foregoing document, as submitted in electronic form, is an exact copy of the written document filed with the Wyoming Supreme Court Clerk and has been scanned for viruses and is free of viruses. Additionally, I certify all required privacy redactions have been made, and with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the Wyoming Supreme Court Clerk.

/s/ Judy Moss_____
Judy Moss
of Frederick J. Harrison, P.C.