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**Admitted pro hac vice*
***Motion for admission pro hac vice forthcoming*

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

DANIELLE JOHNSON, et al. Plaintiffs, v. STATE OF WYOMING, et al., Defendants, and REP. RACHEL RODRIGUEZ-WILLIAMS, REP. CHIP NEIMAN, SECRETARY OF STATE CHUCK GRAY, and RIGHT TO LIFE OF WYOMING, INC. Proposed Intervenors-Defendants.	Case No. 18853

REPLY IN SUPPORT OF WYOMING LEGISLATORS, WYOMING SECRETARY OF STATE, AND RIGHT TO LIFE OF WYOMING'S MOTION TO INTERVENE

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INTRODUCTION

Proposed Intervenors seek to preserve the authority of the People of Wyoming, through the Legislature, to protect unborn life, regulate the medical profession, and legislate on health and welfare, as well as to preserve the legislative gains they have helped bring to fruition through years of pro-life advocacy. These are significant protectable interests which may be impaired by the outcome of Plaintiffs' challenge to House Bill 152, House Enrolled Act 88, Wyo. Stat. §§ 35-6-120–138 (2023) and Senate Bill 109, Senate Enrolled Act 93, Wyo. Stat. §§ 35-6-101–120 (2023) ("the statutes"), and no existing party in this suit adequately represents Proposed Intervenors' interests. Because Plaintiffs' opposition does not overcome Proposed Intervenors' showing that they satisfy all factors to intervene as of right, intervention should be granted under Wyo. R. Civ. P. 24(a)(2). In the alternative, this Court should grant permissive intervention under Wyo. R. Civ. P. 24(b)(l)(B) because Proposed Intervenors' anticipated evidentiary submissions directly relate to Plaintiffs' affidavits and legal arguments and because permitting them to intervene will not result in delay or prejudice.

Plaintiffs have had free rein to introduce unrebutted factual submissions attacking the constitutionality of the statutes—submissions which this Court has relied on to grant a temporary restraining order as to Wyo. Stat. §§ 35-6-120–138. Granting intervention will ensure evidentiary and adversarial completeness, and will have the practical effect of helping this Court and the Wyoming Supreme Court reach a merits resolution more efficiently. Proposed Intervenors do not seek to

revisit a political debate on policy or to proffer irrelevant or unnecessary evidence, but to respond directly to Plaintiffs' evidentiary submissions that go to the heart of the case.

ARGUMENT

I. Proposed Intervenors have timely identified their interests, their risk of impairment, and the inadequacy of existing parties, and should be granted intervention.

A. Intervention as of right is liberally permitted and should be granted here.

Plaintiffs do not dispute the great weight of Wyoming caselaw and persuasive federal caselaw holding that intervention of right should be liberally construed. The Wyoming Supreme Court's four-part test for intervention of right under Wyo. R. Civ. P. 24(a)(2) requires that:

> 1) the applicant must claim an *interest* related to the property or transaction which is the subject of the action; 2) the applicant must be so situated that the disposition of the action may, as a practical matter, *impair or impede* the applicant's ability to protect that interest; 3) there must be a showing that the applicant's interest will not be *adequately represented* by the existing parties; and 4) the application for intervention must be *timely*.

Concerned Citizens of Spring Creek Ranch v. Tips Up, LLC, 2008 WY 64, ¶ 14, 185 P.3d 34, 39 (Wyo. 2008) (emphases added, citation omitted).

1. Rule 24 analysis is liberally applied in favor of intervention.

As this Court previously noted, "Wyoming's Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure. Thus, the Court may utilize federal court interpretations of the Federal Rules of Civil Procedure to guide the Court in interpreting W.R.C.P. Rule 24 which is closely matched to its federal

counterpart." Order on Mot. to Intervene at 7, *Johnson v. Wyoming*, Civil Action No. 18732 (Dist. Ct. Teton Cnty., Nov. 30, 2022) ("Intervention Order"). The Tenth Circuit "has historically taken a liberal approach to intervention and thus favors the granting of motions to intervene." *Kane Cnty., Utah v. United States*, 928 F.3d 877, 890 (10th Cir. 2019) (quoting *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017)); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (Fed. R. Civ. P. 24 interest analysis liberally applied to allow intervention); *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1251 (10th Cir. 2001) (reversing a denial of intervention for applicants who "were 'vocal and outspoken champions and advocates' for the creation of the monument, . . . regularly commented on and participated in the government's monument land management plan, and . . . regularly visit the monument for aesthetic, scientific and recreational purposes."); *Nat'l Farm Lines v. Interstate Com. Comm'n.*, 564 F.2d 381, 384 (10th Cir. 1977) ("Our court has tended to follow a somewhat liberal line in allowing intervention."); *Dowell v. Bd. of Educ. of Oklahoma City Pub. Sch.*, 430 F.2d 865, 868 (10th Cir. 1970) ("[I]ntervention and withdrawal should be freely granted so long as it does not seriously interfere with the actual hearings.").

This Court should apply the Rule 24 test to favor intervention. "The factors of Rule 24(a)(2) are intended to 'capture the circumstances in which the practical effect on the prospective intervenor justifies its participation in the litigation,' and '[t]hose factors are not rigid, technical requirements.'" *WildEarth Guardians*, 604 F.3d at 1198 (citation omitted). "In addition, 'the requirements for intervention may be

relaxed in cases raising significant public interests.'" *Kane Cnty.*, 928 F.3d at 890 (citation omitted). This bias in favor of intervention, and relaxed rigidity in a matter of significant public interest, is certainly called for in a case involving a highly controversial matter of intense local and national interest, upon which 50 years of U.S. Supreme Court precedent was recently overturned. Under such circumstances, this Court should use its discretion to ensure the most complete record on which to make its weighty decision.

2. Proposed Intervenors have significant interests related to the subject of the action, and the risk of impairment to those interests justifies intervention as of right.

Plaintiffs downplay relevant facts and factors, and misstate key arguments, when they cite various cases from other States and federal courts for the proposition that legislators do not have protectable interests in the outcome of a constitutional challenge to a state statute. *See*, *e.g.*, Pls.' Am. Opp'n. to Mot. to Intervene ("Pls.' Opp'n) at 9 (quoting *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015) ("[A] legislator's personal support does not give him or her an interest sufficient to support intervention.")).

Proposed Intervenors do not argue that *any* legislator who happened to vote for a bill has a right to intervene. Rather, the interests of select legislators here, Representatives Rodriguez-Williams and Nieman, are uniquely significant. These are not merely legislators who supported regulation of abortion. They are bill sponsors and chief architects of the challenged legislation, but more importantly for the sake of Rule 24 interest analysis, they have also been tireless advocates for the unborn and women facing unplanned pregnancies for many years. In their vocations and as

private benefactors, they have directed a nonprofit pregnancy resource center which provides medical services, support, and education to young mothers and fathers facing unexpected pregnancies; they promoted foster care, orphan care, and adoption; and they have supported other pregnancy resource centers. Proposed Intervenors Wyoming Legislators' work as sponsors and supporters of the bills challenged in this case and other abortion-related legislation—and in the case of Right to Life of Wyoming (RTLW), advocating for such bills—is but the most formal manifestation of their combined decades of dedicated effort and advocacy for prenatal life. The challenged statutes are a signature achievement of Reps. Rodriguez-Williams' and Nieman's deep investment in this issue advocacy.

RTLW has existed since 1974 (just after the decision in *Roe v. Wade*, 410 U.S. 113 (1973)) to educate the public about the harms of abortion and to advocate for laws that protect pregnant women and unborn human life. For nearly 50 years, RTLW has unrelentingly advocated for legislative and policy action such as the statutes at issue in this case, and for the overturning of *Roe*, which the U.S. Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Org.*, 213 L. Ed. 2d 545, 142 S. Ct. 2228 (2022), accomplished, thus returning the matter of abortion regulation to the States. RTLW's involvement in the issue of abortion policy and persistent record of advocacy for protection of the unborn demonstrates a direct and substantial interest for the purpose of intervention as of right to defend these statutes against Plaintiffs' constitutional challenge seeking the establishment of a fundamental right to abortion that would eviscerate decades of RTLW's efforts.

Similarly, Wyoming Secretary of State Chuck Gray has been an advocate for policies that protect prenatal life for several years. As outlined more thoroughly in the Motion to Intervene, his numerous and award-winning legislative efforts in the years prior to becoming Wyoming's Secretary of State were foundational to the passage of Wyo. Stat. §§ 35-6-120–138 and §§ 35-6-101–12. Like Representatives Rodriguez-Williams and Neiman, and RTLW, Secretary of State Gray's lengthy involvement in the issue of abortion policy and persistent record of advocacy on the issue of abortion warrant intervention. Secretary of State Gray does not intervene to "speak[] for the State of Wyoming and her executive branch," State's Opp'n 3, but only on behalf of his own office, which was created by the Wyoming Constitution, Wyo. Const. art. IV, § 12, in addition to his position as a longtime policy advocate on these issues.

Plaintiffs cannot meaningfully distinguish *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior*, 100 F.3d 837 (10th Cir. 1996), in which the Tenth Circuit 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).[1] 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." *Coal. of Ariz.*, 100 F.3d at 841 (emphases added). If involvement with and persistent advocacy for an owl's protection can amount to a direct and substantial interest for intervention as of right, Proposed Intervenors' greater persistent advocacy for protecting unborn human life should be similarly recognized.

[1] In its order denying a similar motion to intervene in Civil Action 18732, this Court distinguished, with Plaintiffs' encouragement, cases cited by Applicants on the grounds that they "involve distinct environmental interests or economic interests." Intervention Order at 8. Upon consideration of the application in this matter, Proposed Intervenors respectfully suggest that Rule 24 makes no distinction between types of interests; the interest analysis is the same, regardless of the type of interest involved. The Tenth Circuit underscored this point when it said that "economic interest is not the sine qua non of the interest analysis for intervention as of right," and held that the photographer's persistent advocacy for a rare owl bestowed on him an interest for the purpose of intervention as of right in a matter involving the owl. *Coal. of Ariz.*, 100 F.3d at 841. Accordingly, while Proposed Intervenors are not seeking to protect interests in protected species of animals or the administration of insurance policies, commonalities in the Tenth Circuit's analyses of those varying interests under Fed. R. Civ. P. 24 should be especially instructive in analyzing interests under identical language in Wyo. R. Civ. P. 24.

3. State Defendants' fundamentally different approach to defending Wyo. Stat. §§ 35-6-120–138 and Wyo. Stat. §§ 35-6-101–120 shows they will not adequately represent Proposed Intervenors' interests.

Neither do Plaintiffs overcome Proposed Intervenors' showing that representation of their interests may be inadequate. *Spring Creek Ranch*, 185 P.3d at 40 (holding that proposed intervenors "must only show that [their] interest *may not be* adequately represented" (emphasis added)); *see also Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978) (quoting *Nat'l Farm Lines*, 564 F.2d at 383). As the Tenth Circuit explained, on this showing, parties seeking intervention bear a burden that "is minimal; . . . it is enough to show that the representation 'may be' inadequate." *Nat. Res. Def. Council*, 578 F.2d at 1345 (citation omitted). *See also WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009) ("[T]he burden to satisfy this condition is 'minimal,' and . . . '[t]he possibility of divergence of interest need not be great in order to satisfy the burden of the applicants.'").

The inadequacy of State Defendants' representation, and the means by which Proposed Intervenors would helpfully advance this case, is illustrated by the memorandum submitted by Proposed Intervenors as amici curiae in this case in opposition to Plaintiffs' Motion for a Temporary Restraining Order. While, based on the emergency nature and timing of the TRO, this Court denied Proposed Intervenors' Motion for Leave to file the amici brief, had Proposed Intervenors been a party to the case, they would have been able to file their memorandum along with the supporting affidavits of several expert obstetricians and gynecologists and the committee opinion

of a professional organization of that medical specialty. This evidence would have directly rebutted Plaintiffs' evidence that abortion is health care for purposes of Wyo. Const. art. I, § 38, and that abortion is safe and harmless. The State did not introduce any evidence to rebut Plaintiffs' factual submissions, Tr. on Hr'g for TRO (July 27, 2022) at 4 (indicating that the Court would "rely on [Plaintiffs'] affidavits," the Attorney General had "no objection" to their consideration and revealing it had not introduced any affidavits of its own), and this Court relied on those submissions to grant the TRO.

Not only have Proposed Intervenors shown that the State Defendants inadequately represented their interests at the TRO hearing, but the State Defendants' filings confirm that they will continue to do so. For example, State Defendants have repeatedly asserted that the statutes are constitutional as a matter of law and that no production of evidence is necessary. While they "do not oppose . . . intervention", the State Defendants repeatedly emphasize that they "do not agree with the proposed intervenors' apparent belief that this Court should hold an evidentiary hearing or a formal trial in this case." *See*, *e.g.*, State Defs.' Resp. to Proposed Intervenors' Mot. to Intervene at 4.

This discrepancy in how the State Defendants and Proposed Intervenors intend to explain and defend the statutes is not a minor matter of litigation strategy, but is potentially case-dispositive; and Proposed Intervenors are uniquely suited to provide the relevant evidence. While State Defendants acquiesced to Plaintiffs'

introduction of exhibits at the initial TRO hearing in this case,[2] they offered no evidence in rebuttal. This approach leaves an utterly one-sided evidentiary record for appellate review—something about which the Wyoming Supreme Court has already indicated its displeasure[3]—and does not protect Proposed Intervenors' interests. Proposed Intervenors' plan to introduce evidence to rebut Plaintiffs' assertions surely clears the "minimal" hurdle in this circuit.

Plaintiffs' out-of-state and out-of-circuit cases do not show otherwise. Plaintiffs rely on the Seventh Circuit's decision in *Planned Parenthood of Wisconsin, Inc. v. Kaul*, which held that the Wisconsin legislature could not intervene in a case where the attorney general was already defending the challenged law "absent a showing he is acting in bad faith or with gross negligence." 942 F.3d 793, 796 (7th Cir. 2019). But *Kaul* is inconsistent with the Supreme Court's recent decision in *Berger v. North Carolina State Conference of the NAACP*, which allowed North Carolina legislative leaders to intervene even though "[t]he State's attorney general [had] assumed responsibility for defending" the lawsuit. 142 S. Ct. 2191, 2198 (2022). And the Eighth Circuit's decision in *Planned Parenthood of Mid-Missouri & Eastern Kansas, Inc. v.*

[2] Proposed Intervenors note that Plaintiffs have filed another motion for a TRO, this time relating to Wyo Stat. §§ 35-6-101–120. Pls.' Mot. for TRO Against Enforcement of Medication Abortion Ban, May 10, 2023.

[3] "After a careful review of the Certification Order, this Court finds it should decline to answer the certified questions [submitted by this Court in Civil Action No. 18732]. This Court does not believe it can answer all twelve certified questions on the limited factual record provided." Notice of Declination to Answer Certified Questions, *Johnson v. Wyoming*, No. S-22-0294 (Wyo. Dec. 20, 2022) (quoting *Matter of Certified Question from U.S. Dist. Ct., Dist. of Wyoming*, 549 P.2d 1310, 1311 (Wyo. 1976)).

Ehlmann, dealt with standing, not intervention. 137 F.3d 573, 578 (8th Cir. 1998) (declining to reach the intervention issue").

The remainder of Plaintiffs' cases actually support intervention here, by recognizing a distinction between intervenors like the Proposed Intervenors here, who wish to present additional *evidence*, and intervenors who merely want to raise additional *arguments*. In *Maine v. Director, U.S. Fish & Wildlife Service*, the First Circuit explained that it "might view this case differently if the argument [proposed intervenors] wish to present depended on introduction of evidence that the [named defendant] would refuse to present." 262 F.3d 13, 20 (1st Cir. 2001). Similarly, the Sixth Circuit in *Bradley v. Milliken* noted that the proposed intervenors' concerns had already been raised by the parties at the evidentiary hearing. 828 F.2d 1186, 1193 (6th Cir. 1987). And while the district court in *United States v. Idaho* denied intervention as of right, it granted permissive intervention so that the proposed intervenors could call witnesses at the preliminary injunction hearing to present evidence on a factual question. 342 F.R.D. 144, 152 (D. Idaho 2022).

Regardless, both the Wyoming Supreme Court and the Tenth Circuit have already rejected the stricter approach taken by some other circuits. The Wyoming Supreme Court held in *Spring Creek Ranch* that intervention is appropriate where "the present party" is not "willing to make" "the same arguments as the intervenor." 185 P.3d at 41. And while the Tenth Circuit denied intervention in *San Juan County, Utah v. United States*, it specifically noted that the proposed intervenor "ha[d] provided no basis to predict that the Federal Defendants will fail to present evidence

uncovered by [the proposed intervenor] or an argument on the merits that [the proposed intervenor] would make." 503 F.3d 1163, 1206 (10th Cir. 2007). The opposite is true here.

Plaintiffs attempt to distinguish cases in which intervention was allowed even though the government was defending the suit because "the government defendants had actually opposed the policies they were defending" and "the intervenors had private economic interests." Pls.' Opp'n 17. But Wyoming and the Tenth Circuit require neither. On the contrary, the government cannot "adequately represent intervenors' interests" "where there is evidence that the government has multiple objectives." *Zinke*, 877 F.3d at 1169. Even the mere "possibility of divergence of interest" is sufficient to show inadequate representation. *Id.* In that case, the Tenth Circuit allowed an environmental group to intervene in a lawsuit concerning the leasing of public lands with oil and gas reserves for private development even though the intervenor asserted a non-economic "environmental concern" due to the group's "record of advocacy." *Id.* at 1161, 1165.

If granted intervention, Proposed Intervenors' interests would be adequately represented only by factual, medical, scientific evidence that abortion is not health care for purposes of Wyo. Const. art. I, § 38, and that exceptions in the challenged statutes provide no hindrances whatsoever to any necessary medical treatment. Proposed Intervenors are not mere legislators or ordinary citizens who happen to like the statutes challenged here, but dedicated workers and advocates for protection of the unborn. Proposed Intervenors have timely asserted their interests, risk of

impairment, and inadequacy of existing parties, and ask this Court to grant intervention of right.

B. Proposed Intervenors should also be granted permissive intervention.

Plaintiffs cannot dispute that Proposed Intervenors obviously meet the test for permission intervention. "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Wyo. R. Civ. P. 24(b)(1)(B). In deciding whether to grant permissive intervention, a court must also assess whether "intervention will . . . unduly delay or prejudice the adjudications of the rights of the original parties." *Masinter v. Markstein,* 2002 WY 64, ¶ 6, 45 P.3d 237, 240 (Wyo. 2002). On the facts and the law, Proposed Intervenors merit permissive intervention here. *See*, *e.g.*, *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n,* 834 F.3d 562, 565 (5th Cir. 2016) ("Federal courts should allow intervention when no one would be hurt and the greater justice could be attained."); *Middleton v. Andino*, 481 F. Supp. 3d 563, 571 (D.S.C. 2020) (noting liberal policy of allowing intervention and granting permissive intervention to senate president and house speaker where proposed intervenors sought "to prove the constitutionality" of challenged law and intervention would not unduly delay or prejudice parties).

Proposed Intervenors' motion is undisputedly timely. They also have a defense that shares a question of fact or law common with the main action because they propose to advance evidence which will "squarely respond to the challenges made by plaintiffs in the main action." *Kootenai Tribe of Idaho v. Veneman,* 313 F.3d 1094,

1111 (9th Cir. 2002), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.,* 630 F.3d 1173, 1180 (9th Cir. 2011).

Indeed, Proposed Intervenors plan to introduce evidence on the harms to women and unborn children when elective abortions are mistakenly viewed as ordinary health care. They also plan to proffer evidence showing that the Statutes are not unconstitutionally vague because, as part of standard of care and informed-consent procedures, doctors routinely assess the risks of myriad medical procedures and conditions. This evidence is a necessary counterweight to Plaintiffs' affidavits and will provide the necessary adversarial completeness for this Court to arrive at a just merits resolution on a full record.

Because Proposed Intervenors' evidence will serve to directly counter Plaintiffs' unchecked factual submissions, it is relevant and necessary. *See Idaho*, 342 F.R.D. at 152 (allowing permissive intervention where proposed intervenor wished to call witnesses at preliminary injunction hearing to present additional evidence and State had declined to do so). As Plaintiffs put evidence into the record to bolster their case, the adversarial process and justice require the opportunity for rebuttal evidence. If Plaintiffs' factual submissions are relevant and necessary, Proposed Intervenors' direct rebuttal evidence cannot be irrelevant and unnecessary.

Finally, granting permissive intervention will not unduly delay or prejudice anyone. Proposed Intervenors will abide by this Court's deadlines as any other party. Moreover, the laws Plaintiffs challenge are currently enjoined. Plaintiffs' conclusory arguments that the Attorney General is an adequate representative and Proposed

Intervenors will "complicate and delay these proceedings," Pls.' Opp'n 20, are simply wrong.

Ultimately, Plaintiffs' objection to permissive intervention boils down to an unfounded and premature disagreement with Proposed Intervenors' anticipated evidence, and a plea that Plaintiffs should be allowed to develop the factual record without any opposition.[4] This Court should reject that approach and grant permissive intervention to Proposed Intervenors.

II. Under either standard for intervention, and as the litigation history shows, Proposed Intervenors should be allowed to intervene in the interest of a complete factual record and an expeditious resolution to Plaintiffs' challenge.

In a high-stakes, high-profile constitutional lawsuit such as this, the parties and the Court can expect that appeal to the Wyoming Supreme Court is inevitable. When that happens, no one wishes this case to be remanded because of a "limited factual record," as occurred in the prior litigation when Proposed Intervenors were denied intervention. Notice of Declination to Answer Certified Questions, *Johnson v. Wyoming*, Civil Action No. S-22-0294 (Wyo. Dec. 20, 2022) Indeed, liberal intervention by parties with *bona fide* common interests in a subject of litigation promotes expeditious resolution and finality of the matter. By including parties with legitimate protectable interests not adequately represented by other parties, courts promote efficiency by consolidating causes of action into fewer cases and—especially in matters of high-profile controversy like abortion regulation—developing a more

[4] *See* Pls.' Opp'n 19–20 (arguing against granting Proposed Intervenors' permissive intervention).

complete evidentiary record for inevitable appellate review. "[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Coal. of Ariz.*, 100 F.3d at 839.

Proposed Intervenors respectfully submit that this point was borne out by the stalled predecessor case involving these same Plaintiffs and State Defendants. When in Civil Action No. 18732, Plaintiffs brought a constitutional challenge to similar legislation, naming State Defendants, most of these Proposed Intervenors requested this Court's leave to intervene to provide evidence to rebut Plaintiffs' case. Plaintiffs' submitted evidence was not refuted by State Defendants. This Court denied the motion to intervene, Order on Mot. to Intervene, *Johnson v. Wyoming*, No. 18732 (Dist. Ct. Teton Cnty., Nov. 30, 2022), and simultaneously submitted certified questions to the Wyoming Supreme Court pursuant to Wyo. R. App. P. 11, Certification Order, *Johnson v. Wyoming*, Civil Action No. 18732 (Dist. Ct. Teton Cnty., Nov. 30, 2022). In a one-page, four-sentence order, the Supreme Court declined to take up the certified questions, specifically citing the "limited factual record provided." Notice of Declination to Answer Certified Questions.

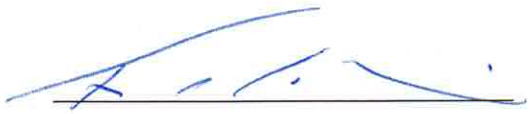
Plaintiffs allege that intervention will result in delay. Proposed Intervenors reply that, for the reasons cited above, granting intervention will *speed* resolution. On the contrary, *denying* intervention will slow things down: "An order denying intervention is final and subject to immediate review if it prevents the applicant from becoming a party to an action." *Coal. of Ariz.*, 100 F.3d at 839. *See also*, *Arney v.*

Finney, 967 F.2d 418, 421 (10th Cir. 1992) ("[A]n absolute denial of intervention is a collateral order and, therefore, is appealable immediately."). Granting the petition of the Proposed Intervenors will give them the judicial audience their interests require, promote the development of the factual record the Wyoming Supreme Court requires, and avoid an unnecessary interlocutory appeal.

CONCLUSION

Last year the U.S. Supreme Court overturned *Roe v. Wade*, holding that "the Constitution does not confer a right to abortion. . . . and the authority to regulate abortion must be returned to the people and their elected representatives." *Dobbs*, 142 S. Ct. 2228, 2279 (2022). Absent any reference to abortion in the Wyoming Constitution, and contrary to the history of abortion law in Wyoming prior to federal usurpation by *Roe*, Plaintiffs urge the Courts of Wyoming to enjoin Wyo. Stat. §§ 35-6-120–138 and Wyo. Stat. §§ 35-6-101–120 by following in the *ultra vires* tradition of *Roe* and discerning a previously-unknown "fundamental right" to abortion. *See* Pls.' Am. Compl., generally. Such a finding would be devastating to the "involvement" and "persistent record of advocacy" Proposed Intervenors have undertaken for many years. For the reasons stated above, Proposed Intervenors respectfully request that this Court grant their intervention to defend their interests.

RESPECTFULLY SUBMITTED this 19th day of May, 2023.



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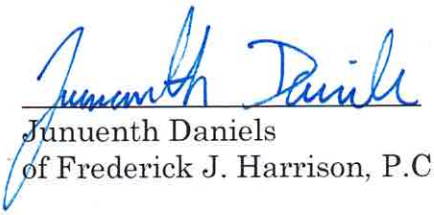
**Admitted pro hac vice*
***Motion for Admission Pro Hac Vice Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, I electronically filed the foregoing paper with the Clerk of Court via email at http://www.tetoncountywy.gov/2069/EmailFax-Filing, which will send notification of such filing to all counsel of record.



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