



March 14, 2025

The Honorable Chuck Gray, Secretary of State
Herschler Building East
122 West 25th Street, Suite 101
Cheyenne, Wyoming 82002

Re: Veto of Senate Enrolled Act No. 92/Senate File 0125 - Defining Health Care and Protecting the People's Welfare

Dear Secretary Gray,

I am vetoing Senate Enrolled Act No. 92 (SEA 92) Defining Health Care and Protecting the People's Welfare. This decision stems from deliberations informed by my unwavering commitment to safeguarding the unborn, the newborn, mothers, women in general, and the health and safety of the citizens of this state. My decision is also rooted in a firm understanding of the meaning of the oath I have sworn multiple times to "support, obey, and defend the constitution of the United States, and the constitution of the state of Wyoming and that I will discharge the duties of my office with fidelity."

My prior actions, including the signing of House Enrolled Act No. 26 (HEA 26) this year, confirm those commitments. For as long as facilities are allowed to perform abortions in Wyoming, HEA 26 sets important standards requiring that they meet the rigorous criteria necessary to attain the classification of ambulatory surgical centers and making sure they meet or exceed all safety requirements. This improvement is essential considering the history of legislation to regulate abortion in Wyoming over the past few years.

In 2022, I signed into law HEA 57/ HB0092 which prohibited abortions "except when necessary to preserve the woman from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions, or the pregnancy is the result of incest as defined by WS 6-2-301 or sexual assault as defined by W.S. 6-2-301." I also certified, per the instruction of that statute, that the Supreme Court had overturned *Roe v. Wade* in *Dobbs v Jackson Women's Health Org* thereby allowing states to enact more stringent measures. HEA 57 repealed the prohibitions already in law. A year later the legislature repealed HEA 57 replacing it with HEA 88/ HB0152 the Life is a Human Right Act (Life Act) which was promptly litigated over the question of whether the Wyoming Constitution includes a right to have an abortion. That case is currently pending before the Wyoming Supreme

Court. I also signed a bill to restrict chemical abortion. The Life Act and the chemical abortion statute are now currently enjoined awaiting the court's judgment.

This history is pertinent because SEA 92 potentially adds to the confusion surrounding which laws are in effect and where the challenges to those laws are in the judicial process. For the most part, SEA 92 simply reiterates and recodifies provisions from the 2023 Life Act currently before the court. The only significant difference is that SEA 92 also seeks to define what health care is or is not as it relates to abortion. My understanding is that the definition of health care is an issue that is being argued in the current litigation that is already before the Wyoming Supreme Court.

It is not unreasonable to expect SEA 92 to be challenged (I have already been sued for HEA 26 and HEA 35 passed into law this year). The provisions contained in SEA 92 are duplicative of those that have already been used to enjoin the Life Act. Another round of litigation testing these considerations would not contribute anything meaningful to Wyoming's laws. Rather than curing the issues presented to the court with regard to the Life Act, the passage of SEA 92 seems to serve the narrow situational purpose of reiterating existing law and adding redundancy. As such, I fear passage of SEA 92 into law will only perpetuate redundant legal challenges, add to the delay Wyoming has already witnessed in litigating the state's ability to regulate abortion, and introduce further complexity into an already robust docket on abortion. It would be much wiser to fashion legislation to cure any deficiencies needed to protect the unborn in existing law once the Wyoming Supreme Court has decided the effect of Article 1, Section 38 of the Wyoming Constitution and its applicability to the Life Act.

Additionally, the Teton County District Court has ruled that abortion is health care under the Wyoming Constitution. If this decision is upheld by the Wyoming Supreme Court, SEA 92 would likely be deemed unconstitutional, which would lead to further legal action. If the Court rules that the Life Act is constitutional, SEA 92 would likely only reiterate that abortion is not health care as that term is used in the Wyoming Constitution, possibly opening a door to yet further litigation on this matter.

Wyoming citizens, through the ballot process, are given the authority and responsibility of deciding what is in our constitution. Article II of our Wyoming Constitution clearly states, "The powers of government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted." Under the separation of powers doctrine, it is the responsibility of the Judicial Branch to interpret

the Wyoming Constitution. While the Legislature may pass laws in an attempt to clarify constitutional provisions, including defining terms used in the constitution, it is the Wyoming Supreme Court that has the final say in constitutional interpretation. Wyoming case law unequivocally provides that, "as the final authority on constitutional questions, the judiciary has the constitutional duty to declare unconstitutional that which transgresses the state constitution." *Gordon v. State by and through Capitol Building Rehabilitation*, 2018 WY 32, ¶55, 413 P.3d 1093, 1109 (Wyo. 2018). By passing SEA 92, the Legislature attempts to overstep its bounds by proscribing through statute what the court can consider with regard to "health care" in its review. Allowing the legislature to circumscribe the court's interpretation of the constitution violates the oath I took to support and defend the fundamental document of our government. Moreover, SEA 92 would rob voters of their voice in clarifying constitutional provisions.

For these reasons, I believe that the veto of SEA 92 serves the best interest of Wyoming citizens. My veto will avoid unnecessary delay, prevent even more legal battles, allow for clarity and finality through the Court's eventual decision, and preserve the precious separation of powers so essential to containing the excesses of government. Thus, I am vetoing SEA 92.

Sincerely,



Mark Gordon
Governor

MG:cb:kh

cc: The Honorable Bo Biteman, President of the Senate
The Honorable Chip Neiman, Speaker of the House
Chief Clerk, Wyoming House of Representatives
Chief Clerk, Wyoming Senate

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

AN ACT relating to the Wyoming constitution, statutes and rules of construction; providing a definition of health care generally applicable to law; providing findings; specifying exceptions; providing definitions; and providing for contingent effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 8-1-110 is created to read:

8-1-110. Definition of health care; rules of construction; purposes; legislative findings; definitions.

(a) For purposes of interpretation and construction under the Wyoming constitution and all statutes of this state, abortion, as defined in W.S. 35-6-122(a)(i), is not health care. For purposes of this section, actions specified in W.S. 35-6-124 shall be construed as health care in addition to the following exceptions:

(i) Performing a pre-viability separation procedure necessary in the physician's reasonable medical judgment to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition or the serious and permanent impairment of a life-sustaining organ of the pregnant woman, provided that no separation procedure shall be deemed necessary under this paragraph unless the physician makes all reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of the unborn baby in a manner consistent with reasonable medical judgment;

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

(ii) Providing medical treatment to a pregnant woman that results in the accidental or unintentional injury to, or the death of, an unborn baby;

(iii) Performing an abortion on a woman when the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301(a)(v). Prior to the performance of any abortion under this paragraph the woman, or the woman's parent or guardian if the woman is a minor or subject to a guardianship, shall report the act of incest or sexual assault to a law enforcement agency and a copy of the report shall be provided to the physician; or

(iv) Performing an abortion on a woman when, in the physician's reasonable medical judgment, there is a substantial likelihood that the unborn baby has a lethal fetal anomaly or the pregnancy is determined to be a molar pregnancy.

(b) The legislature finds that:

(i) As a consequence of an unborn baby being a member of the species homo sapiens from conception, an unborn baby is a member of the human race under article 1, section 2 of the Wyoming constitution;

(ii) The legislature acknowledges that all members of the human race are created equal and are endowed by their creator with certain unalienable rights, the foremost of which is the right to life;

(iii) This act promotes and furthers article 1, section 6 of the Wyoming constitution, which guarantees

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

that no person may be deprived of life or liberty without due process of law;

(iv) Regarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care. Abortion is the termination of the life of an unborn baby. It is within the authority of the state of Wyoming to determine reasonable and necessary restrictions upon abortion, including its prohibition. In accordance with article 1, section 38(c) of the Wyoming constitution, the legislature determines that the health and general welfare of the people requires the prohibition of abortion as defined in this act;

(v) The legislature, in the exercise of its constitutional duties and powers, has a fundamental duty to provide equal protection to all human lives, including unborn babies from conception;

(vi) Wyoming's "legitimate interests include respect for the preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex or disability." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted);

(vii) The legislature recognizes the need to protect the health and general welfare of the people of Wyoming. In accordance with this purpose, the definition and rules specified in this section are provided to advance the health, welfare and safety of all people in Wyoming.

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

(c) As used in this act:

(i) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one (1) or more unborn babies in a multifetal pregnancy, with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn baby. "Abortion" shall not include any use, prescription or means specified in this paragraph if the use, prescription or means are done with the intent to:

(A) Save the life or preserve the health of the unborn baby;

(B) Save the life or preserve the health of the pregnant woman;

(C) Remove a dead unborn baby caused by a spontaneous abortion or intrauterine fetal demise;

(D) Treat a woman for an ectopic pregnancy;

(E) Treat a pregnant woman for cancer or another disease that requires medical treatment which treatment may be fatal or harmful to the unborn baby.

(ii) "Ectopic pregnancy" means a pregnancy that occurs when a fertilized egg implants and grows outside the main cavity of the uterus;

(iii) "Lethal fetal anomaly" means a fetal condition diagnosed before birth and if the pregnancy

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

results in a live birth there is a substantial likelihood of death of the child within hours of the child's birth;

(iv) "Molar pregnancy" means the development of a tumor or cyst that may or may not include placental tissue from trophoblastic cells after fertilization of an egg that results in spontaneous abortion or intrauterine fetal demise;

(v) "Pregnant" means the human female reproductive condition of having a living unborn baby or human being within a human female's body throughout the entire embryonic and fetal stages of the unborn human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth;

(vi) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(vii) "Unborn baby" or "unborn human being" means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages from fertilization to full gestation and childbirth.

ORIGINAL SENATE
FILE NO. SF0125

ENGROSSED

ENROLLED ACT NO. 92, SENATE

SIXTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2025 GENERAL SESSION

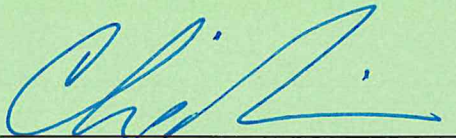
Section 2.

(a) This act is effective on the earlier of:

(i) March 12, 2026; or

(ii) The date on which the Wyoming supreme court renders a decision on the constitutionality of the Life is a Human Right Act, W.S. 35-6-120 through 35-6-138. On the date on which the Wyoming supreme court renders a decision in the matter specified in this paragraph, the attorney general shall certify this date to the secretary of state.

(END)



Speaker of the House



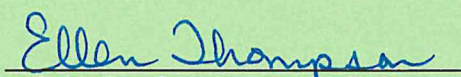
President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.



Chief Clerk