

IN THE SUPREME COURT, STATE OF WYOMING

IN RE: CORRECTION OF VITAL
RECORD,

KAYLA ROYLANCE,

Appellant
(Petitioner),

v.

S-26-0014

STATE OF WYOMING, ex rel.,
DEPARTMENT OF HEALTH,
DIVISION OF VITAL STATISTICS
SERVICES,

Appellee
(Respondent).

BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

This appeal arises from the October 9, 2025, final order of the district court of the Seventh Judicial District denying Appellant K.R.'s Petition for Correction and Re-issue of Vital Record. TR-110. The district court had subject matter jurisdiction over K.R.'s petition to amend the sex marker on her Wyoming birth certificate under this Court's decision in *MH v. First Jud. Dist. Ct. of Laramie Cnty.*, 2020 WY 72, 465 P.3d 405 (Wyo. 2020). This Court has appellate jurisdiction to review the final order pursuant to Article 5, § 2 of the Wyoming Constitution. K.R. timely filed a notice of appeal on November 6, 2025. TR-143-45.

STATEMENT OF THE ISSUES

1. Whether the district court erred in holding that the relief sought by K.R. to amend the sex marker on her birth certificate was barred by the Vital Records Act and the What is a Woman Act.
2. Whether the district court erred in holding that the refusal to provide K.R. with an amended birth certificate did not violate the right to equal protection or privacy under the Wyoming Constitution.

STATEMENT OF THE CASE

A. Nature of Case

Successful navigation of modern life requires proof of identity. From employment to housing, and health care to financial affairs, there are few facets of life where we are not called upon to prove our identities. But when Appellant K.R. is called upon to do so, she cannot use her birth certificate—one of the most foundational documents to verify

identity—as others are freely able to do. That is because the presentation of her birth certificate involuntarily discloses her transgender status and exposes her to an all-too-real risk of harassment, discrimination, and even violence.

Until recently, transgender people born in Wyoming were able to access amended birth certificates consistent with their gender identity. This Court confirmed in *MH* that the legal avenue for them to do so was open when it ruled in favor of a transgender woman seeking to amend the sex marker on her birth certificate.

The district court erroneously held that a categorical barrier now stands in that avenue, blocking transgender people like K.R. from amending their birth certificates to match their gender identity under any circumstance. It first held that this Court erred in *MH* when it suggested that Wyoming’s vital records laws permitted that relief. But the crux of the district court’s decision was that Wyoming’s recently enacted “What is a Woman Act”—which defines “sex” for state-law purposes based on internal reproductive systems—now prohibits the relief requested by K.R. In relevant part, however, the plain language of that law merely directs that the State collect and record data regarding assigned sex. That directive is fully satisfied through K.R.’s original certificate, which remains available to the State regardless of any subsequent amendment. The law does not bar providing a transgender person like K.R. with a copy of an amended certificate consistent with her gender identity, and indeed, the legislators who passed the law specifically disclaimed that it would do so.

To the extent that Wyoming law is construed to bar the relief sought by K.R. (the “Policy”), it violates the right to equal protection and informational privacy secured by

the Wyoming Constitution, as other courts have recognized in similar contexts. The Policy discriminates against K.R. based on sex and transgender status, depriving her of access to a birth certificate consistent with her gender identity, which others are provided. It also infringes upon the right to privacy because one's transgender status is highly personal and intimate information that is involuntarily disclosed through the presentation of an unamended birth certificate.

The law thus triggers heightened scrutiny on either basis, but it fails even the rational relationship test, which is particularly sensitive to legislation harming a group that has been subjected to historical disfavor. Whatever interest the State purportedly seeks to achieve, such as data collection or analysis, it is already achieved through the State's maintenance of the original certificate, which continues to list K.R.'s sex assigned at birth. As the Governor acknowledged in his no-sign letter on the What is a Woman Act, the law is a policy in search of a problem. As detailed below, he explained that it "begs questions of necessity"; it "was not drafted with keen legal objectives in mind"; and its purported goals are already accomplished "whether this Act is signed, not signed, or vetoed." In constitutional terms, it is precisely the type of irrational policy forbidden by the Wyoming Constitution.

B. Appellant K.R.

Appellant K.R. was born in Wyoming and has resided in Natrona County for more than 14 years. TR-3. Although K.R. was assigned male at birth, her gender identity—a person's core internal sense of their own gender—is female. While most people have a gender identity consistent with their sex assigned at birth, transgender people, like K.R.,

do not. From childhood until she transitioned, K.R. felt that her body did not match who she was. TR-30. She experienced significant distress from the discordance between her assigned sex and her gender identity. Hrg. Tr. 6; TR-51. She also engaged in extensive counseling with licensed mental health professionals. Hrg. Tr. 5.

K.R. undertook several steps as part of her transition to live openly as a woman. That included steps to socially transition, such as changing her clothing, hairstyle, and the pronouns she used to match her female gender identity. Hrg. Tr. 7. She likewise took steps to medically transition, beginning with hormone replacement therapy. *Id.* Following her social transition and hormone replacement therapy, K.R. legally changed her name. TR-6. Next, K.R. updated her name and sex marker on her Wyoming driver's license. TR-7. Finally, K.R. received surgical treatment. TR-9-10. After exhausting all other steps to transition appropriate for her, K.R. sought a court order to change the sex marker on her Wyoming birth certificate.

Identity documents in general, and birth certificates in particular, play a critical role in modern life. They answer a fundamental question: who are you? People rely on identity documents to prove to others that they are who they say they are. A birth certificate is an essential government-issued document that serves as proof of one's identity. It is commonly used for a variety of purposes, including proof of identity, age, and citizenship, and by a variety of entities, including employers, government agencies, and financial institutions. TR-31, 35; *see, e.g.*, Wyo. Admin. Code 049.0024.1 § 9, 048.0055.1 § 10, and 011.0006.14 § 19. It also serves as the foundation for other important identity documents such as state-based IDs, social security cards, voter

registration cards, and passports. *See, e.g.*, Wyo. Stat. Ann. §§ 31-7-111 & 22-1-102.

Desmund Tutu described the birth certificate as “a small paper, but it actually establishes who you are and gives you access to the rights and privileges, and the obligations of citizenship.” TR-31 (quotation in cited American Bar Association source).

Denying transgender people identity documents consistent with their gender identity causes significant harm. TR-35. It forcibly discloses their transgender status, which is deeply private and sensitive information, in contexts where they would otherwise keep that information private. Transgender people experience high rates of discrimination, harassment, and violence. *Id.* (citing research showing that transgender people experience about quadruple the amount of victimization as non-LGBTQ persons). Saddling them with identity documents discordant with their gender identity exposes them to these very harms. *Id.* It also undermines the goal of identity verification by causing others to question whether they are the same individuals reflected on their identity documents.

C. Wyoming’s Vital Records Act and Enactment of What is a Woman Act

Before recent events, transgender Wyomingites were able to amend the sex markers on their birth certificates. Wyoming’s Vital Records Act establishes the framework for these amendments, stating that “[a] certificate or record registered under this act may be amended only in accordance with this act and regulations thereunder adopted by the division of health and medical services to protect the integrity and accuracy of vital records.” Wyo. Stat. Ann. § 35-1-424. As expected by the statutory text, the regulations of the Wyoming Department of Health (WDOH) operationalize the

procedures for amendments. This Court in *MH* analyzed those regulations, which provided that the sex marker on a birth certificate could be amended when the sex of an individual had been changed, with an affidavit and physician statement. 2020 WY 72, ¶ 6, 465 P.3d at 407; TR-47-48 (reproducing *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 10, §§ 3, 4). The regulations further provided that the certificate could be amended upon receipt of a court order. TR-48 (§ 4(e)).

In March 2025, Wyoming enacted the What is a Woman Act (“Act”).¹ The Act created a new statute, Wyo. Stat. Ann. § 8-1-110, defining “sex” for purposes of state law. The Act defines “female” according to a reproductive system that transports and utilizes eggs for fertilization and “male” according to a reproductive system that transports and utilizes sperm for fertilization. Wyo. Stat. Ann. § 8-1-110(a). The Act also purports to declare that any Wyoming law enforcing sex-based distinctions in athletics, prisons, restrooms, and other contexts is substantially related to important governmental objectives and thus survives heightened scrutiny. Wyo. Stat. Ann. § 8-1-

¹ This Act was first proposed in 2024. Representative Ward, the original bill sponsor, explained its basis: “Those on the left want to erase boundaries that have existed from the beginning of Creation. The Creator created them male and female. The evil one has always tried to erase the Creator’s boundaries, from the distinctions between . . . men and women. Woe to those who call evil ‘good,’ and good ‘evil,’ who put darkness for light and light for darkness.” House Labor, Health & Soc. Servs. Comm., Jan. 15, 2024, at 26:45 (YouTube), <https://www.youtube.com/live/AGXLwieN9e4>.

110(b), (c). Finally, and as relevant here, the Act directs that WDOH collect data on individuals' sex assigned at birth: "any state agency . . . that collects vital statistics . . . for the purpose of gathering accurate public health, crime, economic or other data shall . . . identify each person who is part of the collected data set as either male or female consistent with the person's sex at birth." Wyo. Stat. Ann. § 8-1-110(d). According to the bill sponsor, Representative Lien, the Act "does not seek to limit the rights or the privileges of other groups." House Labor, Health, & Soc. Servs. Comm., Jan. 15, 2024, at 7:40 (YouTube), <https://www.youtube.com/live/AGXLwieN9e4>. As explained in greater detail below, *infra* § I, legislators also specifically disclaimed that the Act would change the existing legal avenue for transgender people to amend their Wyoming birth certificates.

The Governor permitted the Act to take effect without his signature but issued a "no-sign" letter denouncing its passage. TR-116; Letter from Mark Gordon, Governor, to Chuck Gray, Secretary of State, re: No Sign of House Enrolled Act No. 73/House Bill 0032 – What is a Woman Act (Mar. 14, 2025), <https://governor.wyo.gov/state-government/bills>. He invoked two aphorisms to describe the Act: (1) "If it's worth doing, it's certainly worth overdoing" and (2) "If it's worth doing, it's worth doing badly." *Id.* He stated that while he fully supported efforts to uphold so-called biological distinctions, "this Act begs questions of necessity" and stated that it "was not drafted with keen legal objectives in mind as much as it was to scratch a welcome national political itch." *Id.* He noted that the Act lacks "clear direction on how it would improve current policies or enforcement" and it does not "outline any specific issues it seeks to resolve." *Id.* He

pointed out that there were separate pieces of legislation already regulating access to facilities in public schools and public spaces. *Id.* “These laws were crafted to address specific concerns, whereas [the Act] has a different agenda.” *Id.* He noted that “whether this Act is signed, not signed, or vetoed,” Wyoming law already “recognizes that ‘male’ and ‘female’ are based on biological sex at birth – full stop.” *Id.*

D. District Court Proceedings

K.R. filed her Petition for Correction and Re-issue of Vital Record on February 12, 2025, in the Seventh Judicial District, Natrona County. TR-3-4. She sought a court order to amend the sex marker on her birth certificate in accordance with Wyo. Stat. Ann. § 35-1-424 and *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 10. In response, the district court ordered that K.R. address several issues, including the legal authority for the relief requested, the import of *MH*, and any effect of the Act and other legislation, which were enacted after the filing of the petition, on the requested relief. TR-13-14.

K.R. provided briefing in response to the court’s questions and notified the Attorney General that the constitutionality of a state statute had been drawn into question, pursuant to Rule 5.1 of the Wyoming Rules of Civil Procedure. TR-24-43, 53. She argued that the Act did not bar relief, but further argued that to the extent the court concluded otherwise, the Act violated her rights to equal protection and privacy under the Wyoming Constitution.² TR-29-42. The court held a hearing, which included testimony

² K.R. also argued that the Act infringed upon other constitutional rights, including under the U.S. Constitution, but has not pursued those arguments on appeal here.

from a board-certified clinical psychologist. Hrg. Tr. 5-7. In response to K.R.’s notice regarding the existence of a constitutional issue, the Attorney General notified the court of an intent to appear and be heard on the constitutionality of the Act. TR-52-54. The court then directed further briefing from the Attorney General and K.R. TR-56.

The district court denied K.R.’s petition on October 9, 2025. TR-110. It held that the relief she sought was prohibited by the Vital Records Act, notwithstanding this Court’s decision in *MH*, as well as by the What is a Woman Act. TR-118-127. The court also rejected K.R.’s constitutional arguments, holding that the government had not discriminated against her on any grounds to warrant determining if the law had even a rational basis and that it had not directly disclosed any private information. TR-127-129.

K.R. also separately filed motion to restrict public access to the case record in light of the private information that it contained, which the State did not oppose. TR-131-41. On November 10, 2025, the district court denied that motion on the grounds that there was not a specific rule for sealing the matter but explained that it would consider a motion to strike unredacted filings and move them into the confidential file, while leaving redacted versions in the public file. TR-146. K.R. then filed such a motion, although it was not ruled upon.³

³ This appeal is thus currently captioned with K.R.’s full name. Given K.R.’s privacy interests, however, K.R. respectfully requests that, at a minimum, this Court caption its opinion with her initials—as this Court previously did in *MH*—to minimize the gratuitous disclosure of her transgender status and private medical information.

In November 2025, WDOH issued an emergency regulation and proposed regulation change “[a]s a result of this decision from the Seventh Judicial District Court” to conform WDOH regulations to the district court’s statutory interpretation disallowing the birth certificate amendment at issue here. Wyo. R. 048.0059.10.11192025; Wyoming Dep’t of Health, *Certification Page Regular and Emergency Rules, Statement of Reasons*, Nov. 3, 2025, <https://wyoleg.gov/arules/2012/rules/ERR25-017.pdf>.

STANDARD OF REVIEW

This Court applies *de novo* review to a district court’s rulings on statutory interpretation as well as on the constitutionality of statutes. *Maki v. State*, 2026 WY 32, ¶ 7, -- P.3d -- (Wyo. 2026) (statutory interpretation); *State v. Johnson*, 2026 WY 1, ¶ 12, 582 P.3d 380, 390 (Wyo. 2026) (constitutionality). “We afford no deference to the district court’s determinations.” *Maki*, 2026 WY 32, ¶ 7 (quotes omitted).

ARGUMENT

I. Wyoming Law Does Not Bar K.R.’s Requested Relief.

There is a straightforward statutory basis for resolving this appeal: the Vital Records Act permits the relief sought here, as this Court previously recognized, and the enactment of the What is a Woman Act does not withdraw that authority. While the latter instructs that the Wyoming Department of Health must identify a person’s sex as defined in the law, that objective is fully accomplished by recording and maintaining that information on K.R.’s *original* birth certificate. Nothing in the Act precludes the agency from providing her with a copy of an amended certificate consistent with her gender

identity. Indeed, doing so furthers the vital records objective of accurate identification, as this Court’s precedent confirms.

A. The Vital Records Act Permits K.R.’s Requested Relief.

When interpreting statutes, this Court’s goal is “to give effect to the intent of the legislature” by first “attempt[ing] to determine the legislature’s intent based primarily on the plain and ordinary meaning of the words used in the statute.” *Bain v. City of Cheyenne*, 2025 WY 67, ¶ 12, 570 P.3d 725, 729 (Wyo. 2025) (internal quotes and citation omitted). Here, as the district court recognized and as the Vital Records Act’s plain language demonstrates, the legislature’s intent in creating a system of vital records was to ensure the “registration, collection, preservation, amendment, and certification of vital records and activities related thereto including the tabulation, analysis, and publication of statistical data derived from such records[.]” Wyo. Stat. Ann. § 35-1-401(a)(i)-(ii); TR-111-12. Critically, the Vital Records Act also specifically permits amendments to birth certificates—and without purporting to provide an exhaustive list of permissible amendments. The relevant statute simply provides that a certificate “may be amended only in accordance with this act and regulations thereunder . . . to protect the integrity and accuracy of vital records.” Wyo. Stat. Ann. § 35-1-424(a).

Interpreting these statutory provisions, this Court in *MH* held that a district court had jurisdiction to grant a transgender petitioner the precise relief requested by K.R.: an amended sex marker on a birth certificate consistent with the petitioner’s gender identity. *MH*, 2020 WY 72, ¶ 14, 465 P.3d at 409-10. This Court recognized that amending a transgender woman’s sex marker to match her gender identity comported with the

legislature’s stated intent to ensure the accuracy of vital records. *Id.* ¶ 3, 465 P.3d at 406 (noting that petitioner “identifies and holds herself out as female”). “If a person’s sex—or any other information on a vital record—is incorrect, inability to amend that information would undermine the accuracy of her vital records.” *Id.* ¶ 14, 465 P.3d at 410.

In other cases, this Court has similarly held that district courts have authority to facilitate an accurate birth certificate even absent specific statutory instruction. In *Matter of Adoption of MAJB*, 2020 WY 157, ¶ 27, 478 P.3d 196, 205 (Wyo. 2020), this Court held that a district court had authority to issue an order facilitating a birth certificate for an adopted child listing a birth date two years before the one listed on adoption paperwork, which was inaccurate. As in *MH*, it recognized that a contrary statutory interpretation would undermine the purpose of the Vital Records Act to protect the integrity and accuracy of vital records. *Id.* ¶ 26, 478 P.3d at 205. It also explained that it could not “ignore” the practical importance of the relief requested and the consequences to the child if he were denied relief. *Id.* ¶ 27, 478 P.3d at 205-06.

The district court erred in holding that the Vital Records Act prohibited the relief sought by K.R. TR-126 (holding that such relief was in “conflict” with the statute). The district court acknowledged, correctly, that this Court in *MH* “not only determined that the district had jurisdiction to hear the petition but also suggested that amending [MH’s] certificate . . . was authorized by law.” TR-118. But it disregarded the latter as mere dicta of this Court and instead chose to follow its own interpretation of Wyoming law—“not as others may think it ought to be.” TR-124.

While *MH* decided a jurisdictional question, reading it as nothing more than a jurisdictional decision misses the forest for the trees. It would have been an exercise in futility for this Court to go through the extensive process of analyzing, deciding, and explaining why the district court had jurisdiction over the petition of a transgender woman seeking to amend the sex marker on her birth certificate only for the district to turn around, on remand, and immediately deny that petition on the grounds that the relief was barred under Wyoming law anyway. In fact, the district court in *MH* did no such thing; following this Court’s decision, it granted the petition. TR-122. Moreover, the narrow interpretation of *MH* that the district court here ultimately adopted was suggested in Justice Kautz’s concurrence—but no other justice joined it. The district court here effectively elevated that concurrence to a stature of a holding by this Court.

In any event, the district court’s interpretation of Wyoming’s vital records laws erred on the merits. It affirmatively undermines the Vital Records Act’s goal of accuracy to consign a transgender woman to present a birth certificate indicating that its holder is male when trying to prove her identity. *MH*, 2020 WY 72, ¶ 14 465 P.3d at 410; *see also infra* § II.B (canvassing cases similarly holding that denying transgender people identity documents consistent with their gender identity undermines the goal of accurate identification).

The district court wrongly reasoned that “an amendment to a birth certificate is appropriate only if the birth certificate inaccurately states the ‘facts of birth.’” TR-126. That misapprehends the purpose and utility of birth certificates, which are not merely to record information that existed at the time of a person’s birth, as Wyoming law itself

acknowledges. That is particularly true for the copies of certificates that are provided to individuals—as distinct from the original certificates maintained by WDOH. Wyoming law permits the information reflected on birth certificates to be changed in a variety of circumstances, including name changes, adoption, annulment or amendment of adoption decrees, surrogacy, paternity acknowledgments, paternity determinations, the subsequent marriage of one’s parents, and court-ordered changes.⁴ Thus, Wyoming law specifically contemplates that individuals may obtain copies of birth certificates that do not merely recite facts as they existed at birth, but rather, also serve contemporary purposes. At the

⁴ See, e.g., Wyo. Stat. Ann. § 35-1-410(d) (authorizing changes to who is designated as the mother from the person who gave birth to another person pursuant to court order); Wyo. Stat. Ann. § 35-1-410(e) (authorizing changes to who are designated as parents based upon a gestational agreement, including where neither intended parent has any biological connection to the child); Wyo. Stat. Ann. § 35-1-411 (authorizing changes to who is designated as the father based on affidavit of paternity or court determination of paternity); Wyo. Stat. Ann. § 35-1-416 (authorizing new birth certificate for adoption and amended birth certificate for amendment or annulment of adoption decree); Wyo. Stat. Ann. § 35-1-417 (addressing adoption, paternity determinations, and paternity acknowledgments); *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 10, § 4(b)-(c) (authorizing changes to the name reflected on a birth certificate); *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 10, § 2 (authorizing new certificate based on subsequent marriage of parents after child’s birth).

same time, WDOH also retains original birth certificates—even after the information on them has been changed—fulfilling its statutory duty for the “preservation” of vital statistics. *See, e.g.*, Wyo. R. 048.0059.10 § 4(c) (retaining the original certificate even where information is changed pursuant to court order); Wyo. Stat. Ann. § 35-1-401(a)(ii).

Tellingly, not even the State agreed with the statutory interpretation of the Vital Records Act adopted by the district court. The district court held that to the extent WDOH regulations allowed a transgender woman to change the sex marker on her birth certificate, they “are void because they conflict with the Vital Records Act.” TR-126. This Court in *MH* analyzed those WDOH rules, which permitted amending the sex listed on a birth certificate upon receipt of a court order when an individual’s sex had been changed. 2020 WY 72, ¶ 4 465 P.3d at 407. The State here conceded below that “[i]nterpreting the relevant subsection of [the Vital Records Act] in conjunction with the Department’s rule *allows for* the relief Petitioner requests.” TR-73 (emphasis added). The State separately argued that the enactment of the What is a Woman Act withdrew the agency’s authority to provide relief to K.R.; but it did not view the Vital Records Act as *forbidding* that relief, as the district court here erroneously held.

The district court also erred in suggesting that if the rules authorized the relief at issue, it would render part of them “effectively meaningless.” TR-126. That fails to read the regulatory scheme as a whole, which contains overlapping—rather than conflicting—parts. For instance, like sex marker amendments, name changes can similarly be accomplished through court orders, and they are likewise covered by two different sections of the rules (*Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 10, §§ 3 and

4); but neither is rendered superfluous by the other. One (§ 3) provides a general framework for how WDOH uses court orders, while the other (§ 4) provides context-specific details. The various rules exist in harmony with each other.

While WDOH recently sought to revise its rules regarding amending the sex marker on a birth certificate, the basis for the agency’s action is the district court’s interpretation of Wyoming law.⁵ Because that interpretation is erroneous (as explained above and below), the foundation for that rule change likewise falls away.

B. The Enactment of the What is a Woman Act Does Not Bar Relief.

Wyoming’s enactment of the What is a Woman Act does not withdraw WDOH’s authority to provide K.R. with an amended birth certificate. The Act states that “any state agency . . . that collects vital statistics . . . for the purpose of gathering accurate public health . . . or other data shall, when identification by sex is used, identify each person who is part of the collected data set as either male or female consistent with the person’s sex at birth.” Wyo. Stat. Ann. § 8-1-110(d). As applied here, the Act simply requires that WDOH collect and record K.R.’s assigned sex on her *original* birth certificate; but nowhere does it bar providing her with an *amended* birth certificate consistent with her gender identity.

⁵ Wyoming Dep’t of Health, *Notice of Intent to Adopt Rules, Statement of Reasons*, Nov. 3, 2025 (“As a result of this decision from the Seventh Judicial District Court . . . our office made the following change”), <https://wyoleg.gov/arules/2012/rules/ARR25-107P.pdf>.

The Act’s statutory text is laser-focused on only one aspect of vital statistics: data collection. As relevant here, it only governs an agency “that collects vital statistics” and only where it does so “for the purpose of gathering accurate public health . . . or other data.” *Id.* The Act further specifies that its requirement that a covered entity identify a person by “sex” only applies to the extent the person “is part of the collected data set.” *Id.* The title of the Act echoes this focus on data collection, stating the Act “require[s] the collection of vital statistics and other data.” 2025 Wyo. Sess. Laws, ch. 146. The district court similarly recognized that the Act only “requires *data collection* regarding sex to be based upon a person’s sex at birth.” TR-116 (emphasis added). Notably, the Act also does not amend the existing Vital Records Act statutory provisions concerning the amendment of birth certificates; instead, § 8-1-110 appears in Chapter 1 of Title 8 of Wyoming Statutes, which addresses rules of construction.

K.R.’s possession of an amended certificate does not affect WDOH’s ability to comply with the Act. There is nothing mutually exclusive between WDOH both (1) collecting data regarding individuals’ sex assigned at birth, which are recorded on their original birth certificates, and thereby complying with the Act’s instruction, and (2) providing individuals with copies of amended certificates listing sex markers consistent with their gender identity. The Act does not contain any plain language prohibiting the latter, and this Court should decline to add language that does not exist. *Matter of Guardianship of RTT*, 2026 WY 23, ¶ 11, -- P.3d -- (Wyo. 2026) (“this Court will not read words into a statute when the legislature has chosen not to include them”).

That interpretation of the Act is supported by other courts analyzing similar

statutory text. In *State v. Harper*, 571 P.3d 6, 11 (Kan. App. 2025), the Court of Appeals of Kansas analyzed a Kansas statute named the Women’s Bill of Rights Act with language similar to Wyoming’s What is a Woman Act.⁶ The Kansas statute required that “any state agency . . . that collects vital statistics . . . for the purpose of gathering accurate public health . . . or other data shall identify each individual who is part of the collected data set as either male or female at birth.” Kan. Stat. Ann. § 77-207. The court held that the statute did not bar the state agency at issue from issuing driver’s licenses to transgender people to reflect a sex other than their sex assigned at birth. It recognized that the agency “still maintains records of the original designation” as part of the collected “data set.” *Harper*, 571 P.3d at 24. It held that the Attorney General had “incorrectly read[]” the statute as if it had instead stated that “data shall *only* identify each individual who is part of the collected data set as either male or female at birth.” *Id.* There, as here, the court was bound to “refrain from reading something into the statute that is not readily found in its words.” *Id.*

The legislative history of the Act here further confirms that it does not bar the amended certificate sought by K.R. Even where a statute is unambiguous, Wyoming

⁶ Both Kansas and Wyoming’s statutes are derived from the same model legislation advocated by external proponents. Madison Pauly, *Meet the Mastermind Behind Trump’s Definition of ‘Woman,’* Mother Jones, Feb. 5, 2026, <https://www.motherjones.com/politics/2026/02/trump-anti-trans-may-mailman-sports-ban-womens-bill-of-rights-terf/>.

courts may consider such history “to confirm our interpretation is consistent with the legislature’s intent.” *Solvay Chemicals, Inc. v. Wyo. Dep’t of Revenue*, 2022 WY 122, ¶ 25, 517 P.3d 1123, 1131 (Wyo. 2022); accord *McCallister v. State ex rel. Dep’t of Workforce Servs., Workers’ Comp. Div.*, 2019 WY 47, ¶ 31, 440 P.3d 1078, 1086 (Wyo. 2019). The legislative history here reveals that Wyoming legislators understood that the Act would not change the existing avenue for transgender people to amend the sex markers on their birth certificates. Indeed, that is why a proposed amendment to the legislation failed. Rep. Jarvis Amendment HB0032H2001 to H.B. 32, 68th Leg., 2025 Gen. Sess (Wyo. 2025), <https://www.wyoleg.gov/Legislation/2025/HB0032>. Rather than defining sex based on internal reproductive systems, the amendment would have defined “sex” based on a person’s birth certificate. Critically, Representative Lien—the legislative sponsor of the Act—opposed the amendment because “birth certificates are changeable. The [Wyoming] Supreme Court issued a ruling in 2020. Our Madame Chief Justice wrote in that brief, ‘the legislature could have only restricted the district court jurisdiction by specifically saying so.’” House Floor Session-Day 4, January 17, 2025-AM, at 40:31 (YouTube), https://www.youtube.com/watch?v=cT_iAshxEcw. Another legislator, Representative Ottman, observed, “as we have just talked, the Supreme Court has decided that birth certificates can be changed, and there’s lots of reasons for that.” *Id.* at 46:00. In sum, Wyoming legislators were fully aware that transgender people were able to amend their birth certificates, as confirmed by this Court’s decision in *MH*, and they further understood that the Act would not change their ability to do so.

Finally, even if there were any remaining doubt about whether the Act bars the relief

sought by K.R., the constitutional avoidance doctrine would require adopting an interpretation that avoids potential constitutional infirmity. This Court endeavors to avoid “interpret[ing] a statute to create an unconstitutional result if it can be avoided.” *Bain*, 2025 WY 67, ¶ 18, 570 P.3d at 730 (quotes omitted). There is a straightforward basis here for resolving this appeal solely on statutory grounds.

II. The Policy Violates Equal Protection Under the Wyoming Constitution.

To the extent that the Act is construed to deny birth certificate amendments for transgender people (the “Policy”), it violates the equal protection guarantees of the Wyoming Constitution. That denial strips transgender people like K.R. of equal access to critical identity documents that they can use to prove their identity—without compromising their privacy, dignity, and safety. People who are not transgender, however, continue to have access to such documents. All people—whether transgender or not, and whether assigned male or female at birth—are similarly situated in what is legally relevant here: their basic need for access to identity documents that they can use to prove their identity.⁷ Because this unequal treatment discriminates based on sex and transgender status, it triggers heightened scrutiny on either basis. *Infra* § II.A. But it also fails the rational relationship test. *Infra* § II.B.

⁷ The State does not seem to dispute this basic proposition, conceding below that “[p]eople born male are similarly situated to people born female” and “[b]iological males and biological females are comparable in all relevant respects under the Act.” TR-78.

Wyoming’s commitment to equality is infused across multiple provisions of the Wyoming Constitution. *See, e.g.*, Wyo. Const. art. 1, § 2 (“In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.”); Wyo. Const. art. 1, § 3 (“[T]he laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency”); Wyo. Const. art. 6, § 1 (“Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.”); *see also* Wyo. Const. art. 1, § 34 (providing that “[a]ll laws of a general nature shall have a uniform operation”); *Hoem v. State*, 756 P.2d 780, 781 (Wyo. 1988) (canvassing state constitutional provisions protecting equality).⁸ This Court has thus recognized that “[e]quality, which was forthrightly proclaimed in the Declaration of Independence, but left out of the original United States Constitution under the pressure of the slavery question, is emphatically, if not repeatedly, set forth in the Wyoming Constitution.” *Johnson v. State Hearing Exam’r’s Off.*, 838 P.2d 158, 165 (Wyo. 1992) (quotes and footnote omitted). Wyoming’s commitment to equal protection is steadfast and, by necessity, anti-majoritarian: it safeguards the rights of the minority against the will of the majority that may prevail at a given moment in history. *See* Wyo.

⁸ Not only was Wyoming preoccupied with equality in its constitutional construction, but it also purposefully adopted a “liberal construction” instead of a “strict construction” of the Wyoming Constitution. Robert B. Keiter, *The Wyoming State Constitution* 18 (2d ed. 2017) (quoting Constitutional Convention Journal and Debates 723-24).

Const. art. 1, § 7 (“Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority”).

The protection against discrimination afforded by the Wyoming Constitution is more robust than that afforded by the U.S. Constitution. ““Considering the state constitution’s particular call for equal protection, the call to recognize basic rights, and notion that these particular protections are merely illustrative, the Wyoming Constitution is construed to protect people against legal discrimination more robustly than does the federal constitution.”” *In re Neely*, 2017 WY 25, ¶ 48, 390 P.3d 728, 744 (Wyo. 2017) (holding that a judge’s refusal to perform marriages for same-sex couples on equal terms as different-sex couples violated judicial conduct rules); *see also Wilson v. State ex rel. Off. of Hearing Exam’r*, 841 P.2d 90, 95 (Wyo. 1992). While the U.S. Constitution sets a floor of protection, the Wyoming Constitution elevates it further.⁹ “A state may enlarge rights under the Fourteenth Amendment announced by the Supreme Court of the United States, which are considered minimal, and thus a state constitutional provision may be more demanding than the equivalent federal constitutional provision.” *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 332 (Wyo. 1980); *accord Sheesley v. State*, 2019 WY 32, ¶ 14, 437 P.3d 830, 836 (Wyo. 2019). That is not empty rhetoric: the

⁹ In a circumstance where the U.S. Constitution is more protective of a right than the Wyoming Constitution, “this court is constitutionally obligated to apply the . . . more protective[] federal interpretation.” *Dworkin v. L.F.P., Inc.*, 839 P.2d 903, 913 (Wyo. 1992).

different standards produce different outcomes. This Court has thus struck down state laws under state equal protection even where federal courts have upheld them under federal equal protection. *See Nehring v. Russell*, 582 P.2d 67, 78 (Wyo. 1978) (striking down state law as failing rational relationship test even though Tenth Circuit and Supreme Court authority upheld state laws under U.S. Constitution).

A. The Policy Triggers Heightened Scrutiny Because It Discriminates Against Transgender People Based on Sex and Transgender Status.

Heightened scrutiny places a heavy burden on the government. Under strict scrutiny, which applies to laws that discriminate based on a suspect classification or burden a fundamental right, the government must show that the law is necessary to achieve a compelling government interest. *Allhusen v. State*, 898 P.2d 878, 885 (Wyo. 1995). Under intermediate scrutiny, which applies to laws that discriminate based on sex or quasi-suspect classifications, the government bears the burden of proving that the law substantially furthers an important government objective. *Martin v. Bd. of Cnty. Comm'rs of Laramie Cnty.*, 2022 WY 21, ¶ 14 n.4, 503 P.3d 68, 73 (Wyo. 2022). The justification must have actually motivated the government's action. *United States v. Virginia*, 518 U.S. 515, 533 (1996) (forbidding post hoc justifications under heightened scrutiny). Judicial scrutiny of sex-based discrimination is “stringent” because laws “supposedly based on ‘reasonable considerations’ may in fact reflect ‘archaic and overbroad generalizations about gender.’” *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 799 (10th Cir. 2019). Thus, “as we inquire into a gender-based classification’s objectives, we must beware of stereotypes and their potential to perpetuate inequality.” *Id.* at 802.

1. Discrimination Based on Sex

Discrimination requires two elements—differential treatment and harm—both of which are present here. *See, e.g., Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 657-58 (2020). To begin, there is no question that the Policy causes K.R. harm. The Policy undermines K.R.’s equal ability to use her certificate as proof of identity and prove that she is the same individual reflected on the document, given that it indicates that the document holder is male. Consigning her to present a birth certificate revealing that her birth-assigned sex was “male” also discloses her transgender status and exposes her to discrimination and harassment. *Infra* § III; *see, e.g., Ray v. McCloud*, 507 F. Supp. 3d 925, 938 (S.D. Ohio 2020) (describing how a mismatched birth certificate at a workplace led to “having feces spread on their desk,” “their brake lines cut, and death threats made against them”). This Court has refused to close its eyes to the practical consequences that can flow from a birth certificate that fails to reflect who a person is. *See MH*, 2020 WY 72, ¶ 3; 465 P.3d at 406 (“M.H.’s birth certificate identifies her as male; however, M.H. identifies and holds herself out as female.”); *Matter of Adoption of MAJB*, 2020 WY 157, ¶ 27, 478 P.3d at 205-06.

The Policy also subjects K.R. to differential treatment based on sex for a simple reason at the very least: but for the sex she was assigned at birth, she would have access to a birth certificate consistent with her gender identity, which others are afforded. In other words, had K.R. been assigned female at birth, she would not experience the harm caused by the Policy; she would have access to a birth certificate that identifies her as female.

Courts have recognized that policies discriminate based on sex where the plaintiffs would have avoided the discrimination at issue had they been assigned a different sex at birth. *See, e.g., Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 810-11 (10th Cir. 2025) (holding that a jail housing and commissary policy facially discriminated against plaintiff based on sex, because but for her assigned sex, she could access housing and commissary items consistent with her gender identity), cert. petition filed, (U.S. Oct. 15, 2025) (No. 25-442); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 615 (4th Cir. 2020) (holding that school board discriminated against transgender plaintiff by denying him school records consistent with his gender identity, because “[u]nlike students whose gender matches their sex-assigned-at-birth, Grimm is unable to obtain a transcript indicating that he is male”), cert. denied, 141 S. Ct. 2878 (2021); *see also F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018) (holding that state’s birth certificate policy “violate[d] the Equal Protection Clause by failing to provide an avenue for transgender people to amend the sex listed on their birth certificates”); *D.T. v. Christ*, 552 F. Supp. 3d 888, 895-96 (D. Ariz. 2021) (holding that restrictions in state birth certificate policy discriminated against transgender people based on sex). Thus, even if sex is understood to mean nothing more than a person’s sex assigned at birth, or what the State refers to as biological sex, the Policy still discriminates against K.R. on that basis.

The district court wrongly reasoned that there was no discrimination at all because the Act “defines ‘sex’ for all persons the same.” TR-127. But the “equal application” of a law does not negate the existence of discrimination. Otherwise, laws barring same-sex couples from marriage also did not discriminate on any grounds, because no one could

marry a person of the same sex. And that faulty reasoning would mean that “racially segregated bathrooms treated everyone equally,” because no one could use a restroom for a different race. *Grimm*, 972 F.3d at 609. That is not how equal protection works. The Supreme Court also recognized that an employer discriminates based on sex even if “it is equally happy to fire male *and* female employees who are homosexual or transgender.” *Bostock*, 590 U.S. at 662. Instead of avoiding discrimination, doing so “doubles it.” *Id.* at 659.

The district court also wrongly held that the Policy here does not discriminate based on sex, misunderstanding the federal equal protection analysis in *United States v. Skrametti*, 605 U.S. 495 (2025). If anything, *Skrametti* supports why the Policy does so. *Skrametti* held that a Tennessee law, which barred gender-affirming care for minors, did not discriminate on the basis of sex. The reason, according to *Skrametti*, is because changing only the minor’s assigned sex would not be sufficient to change the outcome; rather, it also required changing the medical condition being treated. It compared the example of a transgender boy (whose assigned sex is female) who is barred from taking puberty blockers to treat gender dysphoria with the example of another boy (whose assigned sex is male) who is able to take puberty blockers under the law. *Id.* at 513-14. But it held that the latter boy *also* needed a qualifying diagnosis, like precocious puberty, to receive puberty blockers under the law. Thus, merely changing a minor’s assigned sex did not change the outcome in *Skrametti*.

Skrametti illustrated the same point using the example of a transgender boy seeking testosterone for gender dysphoria. “If you change his biological sex from female to male,

[Tennessee law] would still not permit him the hormones he seeks because he would lack a qualifying diagnosis for the testosterone—such as a congenital defect, precocious puberty, disease, or physical injury.” *Id.* at 520. Thus, the Court held that his sex was not “the but-for cause of his inability to obtain testosterone.” *Id.* at 521 In other words, two variables would have to change—*both* the patient’s assigned sex *and* the medical condition for which treatment is sought—to change the outcome under Tennessee law. *Cf. id.* at 520 (explaining that the court must “change one thing at a time and see if the outcome changes” to ascertain if a but-for cause exists) (quotes omitted).

Here, however, changing only K.R.’s assigned sex changes whether she can access a birth certificate consistent with her gender identity. In contrast to *Skrmetti*, there is no second variable that must be changed to change the outcome under the Policy. Changing K.R.’s assigned sex is sufficient.

Other courts have confirmed that this straightforward reasoning for detecting sex discrimination remains in full force after *Skrmetti*. *See Roe v. Sjolander*, 805 F. Supp. 3d 1083, 1087 n.4 (D. Ariz. 2025) (finding *Skrmetti* “inapplicable” to case involving transgender plaintiffs seeking amended birth certificates consistent with their gender identity); *Doe v. South Carolina*, No. 25-1787, 2025 WL 2375386, at *8 & n.11 (4th Cir. Aug. 15, 2025) (holding that a school policy that banned transgender boy from boy’s restroom based on his sex assigned at birth likely violated equal protection in light of *Grimm*, which “remains the law of this Circuit” and had not been abrogated by the Supreme Court); *id.* at *10 (Diaz, J., concurring) (explaining that *Skrmetti* “has little to say about the issues *Grimm* addressed”); *see also Am. Ass’n of Physicians for Human*

Rights, Inc. v. NIH, No. 8:25-cv-01620-LKG, 2025 WL 2377705, at *8 (D. Md. Aug. 14, 2025) (affirming that *Grimm* remains good law after *Skrmetti*). Thus, even if this Court were inclined to consider *Skrmetti*'s federal equal protection analysis in interpreting the Wyoming Constitution, it would support K.R., not the State.

Sex discrimination also does not *only* exist in situations where the law “prohibit[s] conduct for one sex that it permits for the other,” as the district court here implied. TR-128 (quoting *Skrmetti*, 605 U.S. at 514-15)). *Skrmetti* did not hold otherwise. Striking potential jurors on the basis of sex is still plainly sex discrimination, for instance, even if one sex, as a group, is not treated worse than another, as a group. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 140-42 (1994) (explaining that individual jurors have a right to nondiscrimination and this “right extends to both men and women”). Likewise, a government policy requiring conformity with expectations associated with one’s assigned sex may not treat one sex better or worse than the other; but it would be sex discrimination all the same. *See Doe v. Rocky Mtn. Classical Acad.*, 99 F.4th 1256, 1260 (10th Cir. 2024) (rejecting that a school dress code could escape “the traditional intermediate scrutiny framework” even if it imposed “comparable burdens” on males and females). While prohibiting conduct for one sex that is permitted for another is *one* example of sex discrimination, it does not comprise the universe of discrimination.

Indeed, by consigning K.R. to present an identity document inconsistent with her gender identity, the Policy also enforces conformity with sex-based expectations. The Supreme Court has long recognized that sex-based discrimination encompasses sex stereotypes. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that an

employer discriminated against a woman deemed insufficiently feminine, even if the employer had no objection to women per se). That principle applies with particular force to transgender people. *See, e.g., EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 576 (6th Cir. 2018) (recognizing that “stereotypical notions of how sexual organs and gender identity ought to align” are inherent in discrimination against transgender people); *Smith v. Avanti*, 249 F. Supp. 3d 1194, 1200-01 (D. Colo. 2017) (recognizing that discrimination against transgender people is based on sex stereotyping).

Finally, the Supreme Court’s stay order in *Trump v. Orr*, 146 S. Ct. 44 (2025), which stayed a preliminary injunction against a federal policy that required new passports to display an individual’s biological sex at birth, also does not change the state equal protection analysis here. That interim order is based on the premise—yet to be adjudicated in a final determination¹⁰—that the passport policy at issue “is merely attesting to a historical fact without subjecting anyone to differential treatment.” *Id.* at 46. That is not the case here, as the very existence of amended birth certificates illustrates, because amended certificates are not merely attesting to historical facts. *Supra*

¹⁰ The Supreme Court has cautioned that a stay order “should not be read as a final determination on the merits.” *Dep’t of State v. Aids Vaccine Advoc. Coal.*, 146 S. Ct. 19 (2025). That caution is particularly important here, because the Court also indicated that the merits in *Orr* would take into account that the relief sought would enjoin “an Executive Branch policy with foreign affairs implications”—a feature that is wholly absent here. *Orr*, 146 S. Ct., at *46.

§ I.A (canvassing the changes permitted to birth certificates under Wyoming law, including for name changes, adoptions, and surrogacy). Original birth certificates may attest to historical facts—but, as explained above and below, K.R. does not seek relief as to that document.

2. Discrimination Based on Transgender Status

The Policy also discriminates against K.R. based on her transgender status, which provides a further basis for heightened scrutiny. Just as changing K.R.’s birth-assigned sex changes the outcome here, the same is true with respect to changing her transgender status. *Supra* § II.A.1. The district court’s reliance on *Skrmetti*, TR-128, which analyzed a state law that the Court found discriminated based on medical condition, thus fails to negate the existence of discrimination based on transgender status here, just as it fails to negate the existence of discrimination based on sex.

This Court has explained that the existence of discrimination can be established in multiple ways, including where the law operates as ““a device designed to impose different burdens on different classes of people”” as well as where there is facial discrimination by the terms on which the law operates. *Hicks v. State*, 2025 WY 113, ¶¶ 141, 578 P.3d 366, 401 (Wyo. 2025) (quoting *State v. Laude*, 654 P.2d 1223, 1226 (Wyo. 1982)). Regardless of how it is analyzed, transgender people are the target of the Act. The law does not change anything for people who are not transgender: they may continue, for example, to access and rely upon identity documents just as they did before. The Policy only changes the status quo for transgender people like K.R. Transgender people alone face a categorical barrier to accessing certificates consistent with their

gender identity. And no other group, aside from transgender people, must contend with a rule of construction purporting to deny their very existence under all of Wyoming law. *See PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 444 (D. Md. 2025) (one “cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist”); *Washington v. Trump*, 768 F. Supp. 3d 1239, 1250 (W.D. Wash. 2025); *Romer v. Evans*, 517 U.S. 620, 632 (1996) (analyzing unusual breadth of law targeting a single group). As with the Policy’s discrimination based on sex, its discrimination against transgender people is also facially apparent by the operation of its terms. *Cf. Griffith*, 129 F.4th at 811 n.12; *Doe v. Horne*, 115 F.4th 1083, 1104 (9th Cir. 2024).

Discrimination based on transgender status requires heightened scrutiny, both because it necessarily discriminates based on sex and because it bears the indicia of a suspect or quasi-suspect classification. As the Supreme Court explained in *Bostock*, “it is impossible to discriminate against a person for being ... transgender without discriminating against that individual based on sex.” 590 U.S. at 660; *see also Doe*, 115 F.4th at 1107. As noted above, the Policy here discriminates against K.R. based on her assigned sex, at a minimum.

Discrimination based on transgender status also triggers heightened scrutiny because it bears the indicia of a suspect or quasi-suspect classification. This Court has considered federal precedent and the precedent of other state courts in deciding whether a suspect or quasi-suspect classification exists under the Wyoming Constitution. *See, e.g., Hansen v. State*, 904 P.2d 811, 819 (Wyo. 1995); *Washakie Cnty. Sch. Dist. No. One*, 606

P.2d at 334. The indicia of such a classification include where the government targets a class that (1) has been historically subjected to discrimination, (2) has a defining characteristic frequently bearing no relation to one’s ability to perform or contribute to society, (3) has obvious, immutable, or distinguishing characteristics, and (4) is a minority or politically vulnerable. *Karnoski v. Trump*, 926 F.3d 1180, 1200 n.17 (9th Cir. 2019). Not all of these indicia must be present to warrant heightened scrutiny, *see United States v. Windsor*, 699 F.3d 169, 181 (2d Cir. 2012); rather, the presence of each additional factor further demonstrates the need for judicial suspicion.

As a litany of courts, including the Fourth and Ninth Circuits, have recognized, all these indicia are present for transgender people.¹¹ First, there has been a long and cruel history of discrimination against transgender people, which remains pervasive to this day. Pelecanos, Harlow, & Shiffner, A Good Reason To Be Suspicious: The U.S. Legal

¹¹ *See, e.g., Karnoski*, 926 F.3d at 1200; *Grimm*, 972 F.3d at 610-13; *Ray*, 507 F. Supp. 3d at 937; *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719-22 (D. Md. 2018); *Flack v. Wis. Dep’t of Health Servs.*, 328 F. Supp. 3d 931, 952-53 (W.D. Wis. 2018); *F.V.*, 286 F. Supp. 3d at 1144; *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139-40 (S.D.N.Y. 2015); *see also Cross v. State*, 560 P.3d 637, 656 (Mont. 2024) (McKinnon, J., concurring) (analyzing state constitutional equal protection).

History of Transgender Discrimination, U. Chi. L. Rev. Online 1 (2026),

[https://lawreview.uchicago.edu/online-archive/good-reason-be-suspicious-us-legal-](https://lawreview.uchicago.edu/online-archive/good-reason-be-suspicious-us-legal-history-transgender-discrimination)

[history-transgender-discrimination](https://lawreview.uchicago.edu/online-archive/good-reason-be-suspicious-us-legal-history-transgender-discrimination). “There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.” *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *Grimm*, 972 F.3d at 612; *see also infra* § II.B. Second, this longstanding discrimination is unrelated to transgender people’s value to society. *Grimm*, 972 F.3d at 612; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 874; *Adkins*, 143 F. Supp. 3d at 139. Third, transgender people have an obvious, immutable, or distinguishing characteristic that defines them as a discrete group. *Grimm*, 972 F.3d at 612-13; *Ray*, 507 F. Supp. 3d at 937. Finally, “transgender people are unarguably a politically vulnerable minority.” *F.V.*, 286 F. Supp. 3d at 1145; *Grimm*, 972 F.3d at 613. That is true in Wyoming as well, where transgender people constitute a very small minority of the population. TR-34.

B. The Policy Fails Even the Rational Relationship Test.

While the Policy requires heightened scrutiny,¹² its application to transgender people fails even the rational relationship test. *A fortiori*, it fails heightened scrutiny as

¹² The Act fails heightened scrutiny at the very outset because the government’s justification must have actually motivated the law, *Virginia*, 518 U.S. at 533, and here, legislators *disclaimed* that the Act would ban transgender people from changing their birth certificate sex markers. *Supra* § I.B. And the Governor likewise made clear that he

well. This Court employs a multi-part analysis under the rational relationship test. That analysis considers: “(1) what class is harmed by the legislation and has that group been subjected to a tradition of disfavor by our laws; (2) what is the public purpose to be served by the law; (3) what is the characteristic of the disadvantaged class that justifies disparate treatment; and (4) how are the characteristics used to distinguish people for disparate treatment relevant to the purpose the challenged law purportedly intends to serve.” *Allhusen*, 898 P.2d at 885.

Class Harmed and Historical Disfavor. First, the Policy harms transgender people, and there is also no question that they have been subject to a history of disfavor. *Supra* § II.A.2. As noted, the Policy deprives transgender people of key identity documents that they can equally use in navigating modern life and without exposing themselves to discrimination and harassment. *Cf. Allhusen*, 898 P.2d at 886 (finding that law disadvantaged a class of unlicensed counselors by making it more difficult to acquire hours needed to sit for licensure exam). While a history of disfavor is not required for a law to fail the rational relationship test, its existence increases the risk that stereotypical thinking or overbroad generalizations may be at play. *Id.* at 886. Indeed, federal courts have similarly recognized that “rational basis review should be more demanding when there are historic patterns of disadvantage suffered by the group.” *Windsor*, 699 F.3d at 180.

did not view the Act as accomplishing any legal objective, particularly in light of other legislation already regulating specific contexts.

The Policy is not the only Wyoming law adversely affecting transgender people. *See, e.g.*, H.B. 72, 68th Leg., 2025 Gen. Sess. (Wyo. 2025) (government building restroom and facilities restrictions); S.F. 62, 68th Leg., 2025 Gen. Sess. (Wyo. 2025) (school restroom and facilities restrictions); S.F. 44, 68th Leg., 2025 Gen. Sess. (Wyo. 2025) (college sports restrictions); S.F. 144, 67th Leg., 2023 Gen. Sess. (Wyo. 2023) (gender-affirming care ban for transgender youth); S.F. 133, 67th Leg., 2023 Gen. Sess. (Wyo. 2023) (grades 7-12 sports restrictions); *see also* Cy Heff, *As Wyoming Slides Further to the Right, Legislators Double Down on Trans Bills*, *The Guardian*, Mar. 10, 2025, <https://www.theguardian.com/us-news/2025/mar/10/wyoming-trans-rights-bills> (cataloging anti-transgender Wyoming legislation). The Governor has acknowledged the existence of this pervasive discrimination, noting “high rates of bullying, discrimination and suicide” for transgender youth in particular. Letter from Mark Gordon, Governor, to Chuck Gray, Secretary of State, *re: SF0133/SEA No. 0092 Student Eligibility in Interscholastic Sports* (Mar. 17, 2023), <https://governor.wyo.gov/state-government/bills> (link for SEA0092/SF0133). Indeed, there is also a long history of *de jure* discrimination against transgender people, including in the form of ordinances against cross-dressing. Cross-Dressing Laws, Local Ordinances, <https://crossdressinglaws.org/local-ordinances-table> (listing ordinances from 14 Wyoming cities ranging from 1874 to 1915 that banned people from appearing in public “in a dress not belonging to his or her sex”).

Public Purpose. Second, the public purpose for the Policy, as it pertains to vital statistics, is data collection. That is supported by the statutory text: it covers WDOH as a state agency “that collects vital statistics . . . for the purpose of gathering accurate . . .

data” and directs what information must be included as “part of the collected data set.” Wyo. Stat. Ann. § 8-1-110. But the dilemma for the State, as discussed above, is that legislators—including the Act’s sponsor—disclaimed that the Act would bar amended birth certificates like the one sought by K.R. *Cf. Alhusen*, 898 P.2d at 996 (analyzing the legislative purpose offered by the drafter of legislation). After all, the information about K.R.’s assigned sex will already be collected, recorded, and preserved on her original birth certificate, and the State is free to use that data for any statistical analysis. Thus, the purpose of the Act is not served by denying her an amended certificate. The Governor agreed that the Act here seems to serve no purpose at all and “begs questions of necessity.” And even if the State could identify a purpose served by the Policy here, it would still need to be balanced against the rights of the individual harmed by the law. *See Painter v. Abels*, 998 P.2d 931, 940 (Wyo. 2000).

Relevance of Characteristic to Justification. With respect to the third and fourth parts of the inquiry—the relevance of the characteristics of the disadvantaged class to the purpose that purportedly justifies the disparate treatment—the Policy lacks a rational relationship to any government interest that could justify its application. The State primarily argued below that the Policy furthered an interest in historical accuracy. It also suggested that the law could be justified by the regulation of sex-separated facilities and activities.

Historical Accuracy. As explained above, *supra* § I.A, the copies of certificates that are provided to individuals do not merely record information at the time of birth. Wyoming birth certificates can be changed to reflect non-birth facts. For instance, given

names can be changed, added, or deleted; intended parents can replace biological parents; adoptive parents can replace birth parents; a post-birth spouse can replace an unknown birth parent; and other items can be amended where the court deems appropriate through a court order. Wyo. Stat. Ann. §§ 35-1-410, 35-1-412; *Rules, Wyo. Dep't of Health, Vital Records Servs.*, ch. 10. Wyoming's own laws thus confirm that birth certificates are not immutable records of circumstances that existed at a fixed point in time.

These features of state law negate any contention that birth certificates must remain unaltered to preserve their "historical accuracy." *See Ray*, 507 F. Supp. 3d at 938 (rejecting proffered interest of "maintaining historically accurate records" on similar grounds); *F.V.*, 286 F. Supp. 3d at 1141 (observing that post-birth amendments to birth certificates are permitted). Rather than exist as mere historical records, birth certificates also operate as contemporaneous identity documents that people use to fully participate in society, including when applying for employment, enrolling in school, or obtaining a passport, a driver's license, a social security card, or a voter registration card. *See, e.g.*, Wyo. Stat. Ann. § 31-7-111; Wyo. Stat. Ann. § 22-1-102.

Perhaps more importantly, the relief sought by K.R. is limited to providing her with an amended version of her birth certificate; it does not change the *State's* ability to retain and use the original certificate and its underlying information for any permissible purpose. Even where WDOH changes information on a birth certificate, it retains the original certificate. *See, e.g., Rules, Wyo. Dep't of Health, Vital Records Servs.*, ch. 10 § 3 (retaining the original certificate even where information is changed pursuant to court order). Thus, for example, nothing about the relief sought by K.R. changes the State's

ability to engage in any “tabulation, analysis and publication of statistical data derived from such records.” Wyo. Stat. Ann. § 35-1-401. And nothing about that relief prevents WDOH from sharing any data recorded on original birth certificates authorized by law. Wyo. Stat. Ann. § 35-1-427 (authorizing sharing of data to other government agencies); *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, ch. 12 § 5 (same). In other words, any conceivable government interest is already fully achieved through the original certificate under Wyoming law. If information regarding one’s assigned sex at birth is needed for some reason, the State has access to it. There is no rational basis for refusing to provide *K.R.* or others like her with an amended version of their certificate.

This Court has long recognized that the requisite rational connection between a law and a purported interest can be severed where that interest is already achievable without the law. *See Allhusen*, 898 P.2d at 885, 887 (holding that the government’s interest in patient safety was already served by supervision of care by licensed counselors, statutory and administrative process for complaints, and other means of more directly addressing any problems); *Nehring*, 582 P.2d at 78 (holding that law limiting relief for automobile passengers injured as guests was irrational in light of the availability of liability insurance); *see also Hoem*, 756 P.2d 780 (holding that law failed rational relationship test where it was “silent as to other conceivable approaches to solving the alleged crisis”); *Allhusen*, 898 P.2d at 888 (taking into account “the failure to consider other policy options” in assessing law’s rationality). That is precisely the situation here. The Policy is a solution in search of a problem. The Governor himself candidly confessed “this Act begs questions of necessity,” as it “was not drafted with keen legal

objectives in mind” and the State’s objective is already achieved “whether this Act is signed, not signed, or vetoed.” Gordon Letter (Mar. 14, 2025).

Indeed, courts have specifically recognized that the government’s ability to retain original birth certificates negates any rational connection to government interests proffered to justify banning sex marker amendments under the U.S. Constitution. *See H.R. v. Cunico*, 745 F. Supp. 3d 842, 852 (D. Ariz. 2024) (rejecting government’s justification for refusing to provide amended birth certificates because amendment does not destroy the original); *de la Fuente Díaz v. González Colón*, 786 F. Supp. 3d 453, 467 (D.P.R. 2025) (finding no rational basis because “the Commonwealth already has existing processes in place to retain original birth certificates in cases where a birth certificate has been subsequently amended”), *appeal docketed*, No. 25-1638 (1st Cir. Jul. 22, 2025); *see also Harper*, 571 P.3d at 24 (holding that statutory objective was already achieved because state “maintains records of the original designation”).¹³

The Policy’s irrationality is even starker given that transgender people were previously able to amend the sex marker on their birth certificates without any evident impairment of the State’s purported interests in data collection. *See Allhusen*, 898 P.2d at

¹³ The reasoning of the Tenth Circuit’s opinion in *Fowler v. Stitt*, 104 F.4th 770, 795 (10th Cir. 2024), *cert. granted, vacated, and remanded*, No. 24-801, 145 S. Ct. 2840 (2025), provides further persuasive support. The GVR order in *Fowler* also “doesn’t necessarily signal a disagreement with the panel’s reasoning or result.” *Vincent v. Bondi*, 127 F.4th 1263, 1264 n.1 (10th Cir. 2025) (affirming original opinion after GVR order).

887-88 (noting the absence of any indication that complaints under status quo could justify law and rejecting government’s conjecture as unpersuasive); *Hoem*, 756 P.2d at 783 (noting the absence of any support for “the existence of such a crisis in Wyoming or elsewhere”); *Ray*, 507 F. Supp. 3d at 939 (noting that state’s “about-face” in barring transgender people from correcting their birth certificates after previously allowing such corrections was not in response to any problems). Notably, Wyoming’s prior policy of allowing amendments was not unique. *Ray v. Himes*, No. 2:18-cv-272, 2019 WL 11791719, at *12 (S.D. Ohio Sept. 12, 2019) (noting that other states had similarly “figured it out”); *see also Love v. Johnson*, 146 F. Supp. 3d 848, 857 (E.D. Mich. 2015) (expressing “serious[] doubt[]” that other states permitting changes to sex markers “have any less interest in ensuring an accurate record-keeping system”).

Transgender Wyomingites, like the petitioner in *MH* in whose favor this Court ruled, have been able to obtain amended birth certificates consistent with their gender identity.¹⁴ TR-122. Yet there is no coherent explanation that the State can articulate of how providing them with these amendments has harmed anyone else, or how it could do so. For instance, the State suggested below that the Policy might minimize public benefits fraud, but it failed to explain *how* amending the sex marker on K.R.’s birth certificate could conceivably do so. *See Dep’t of Agric. v. Moreno*, 413 U.S. 528, 536-37

¹⁴ *See also* SR Mary Elizabeth, *Legal Aspects of Transsexualism* 71 (1990) (noting, in 1990, the ability to obtain new certificates from Wyoming’s Vital Records Services), <https://www.digitaltransgenderarchive.net/downloads/5q47rp016>.

(1973) (rejecting fraud prevention as providing a rational basis for challenged policy targeting disfavored group).

The Policy’s irrationality is further exposed by the fact that it undermines the very purpose for which identity documents exist in the first place: identity verification. When K.R. attempts to prove that she is the person reflected on her birth certificate, and yet that document indicates that the certificate holder is male, that discordance impedes the goal of verifying her identity. In these situations, when transgender people “furnish their [identity document] to third-persons for purposes of identification, the third-person is likely to conclude that the furnisher is not the person described on the [identity document].” *K.L. v. State, Dept. of Admin., Div. of Motor Vehicles*, No. 3AN-11-05431-CI, 2012 WL 2685183, at *7 (Alaska Super. Ct. Mar. 12, 2012) (invalidating ban on changing driver’s license sex marker under state constitution); *H.R.*, 745 F. Supp. 3d at 852 (recognizing that identity documents discordant with one’s gender identity “would be misleading and likely unhelpful in accurately verifying identity”); *Love*, 146 F. Supp. at 856. That thwarts any interest in accuracy. *See MH*, 465 P.3d at 410 (recognizing that the inability to amend incorrect information “would undermine the accuracy of her vital records”). As the Utah Supreme Court explained, “[t]hese changes are not just symbolic; they help avoid the confusion that can result when people hold themselves out as having one name or as being one sex but have government identification that says differently.” *In Re Childers-Gray*, 487 P.3d 96, 108 (Utah 2021). Barring transgender people from identity documents matching their gender identity thus “obviate[s] the very purpose of legal identification.” *Id.* n.18.

Sex Separation. The State also wrongly argued below that the Policy rationally furthers an interest in regulating sex-separated activities and spaces, such as excluding transgender people from school athletics and facilities to the extent they are separated by sex. That argument fails out of the gate for a simple reason. As the Governor’s no-sign letter points out, there are already separate laws imposing such restrictions. The Policy adds nothing. *See Allhusen*, 898 P.2d at 885, 887; *Nehring*, 582 P.2d at 78.

The State’s argument also assumes the government is constitutionally permitted to engage in such discrimination—which is neither an issue presented by this case (let alone litigated on a factual record) nor an outcome that is reasonable to assume.¹⁵ That is particularly true for the more robust equality protections afforded under the Wyoming Constitution. *Cf. Grimm*, 972 F.3d at 608-14 (holding that exclusion of transgender boy from boys’ school restroom violated federal equal protection); *Whitaker*, 858 F.3d at 1051; *Doe v. Boyertown*, 897 F.3d 518, 530 (3d Cir. 2018); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 220-22 (6th Cir. 2016). The government cannot prevail in this litigation on the unproven assumption that it would prevail in other litigation. Nor should

¹⁵ Indeed, the Governor previously stated that Wyoming’s ban on transgender students participating in sports matching their gender identity “is overly draconian, is discriminatory without attention to individual circumstances or mitigating factors, and pays little attention to fundamental principles of equality.” Gordon Letter (Mar. 17, 2023).

this Court issue an advisory opinion deciding a hypothetical case in order to resolve the narrow and concrete dispute actually presented here. *See Gober v. State*, 2025 WY 96, ¶ 19 n.1, 574 P.3d 1081, 1086 (Wyo. 2025) (refusing to issue an advisory opinion, which would require speculation and premature ruling on issues not before the Court); *Ririe v. Bd. of Trs. of Sch. Dist. No. One, Crook Cnty., Wyo.*, 674 P.2d 214, 225 (Wyo. 1983) (refusing to issue advisory opinion on constitutional issues).

Even if the State could show that it is constitutional to exclude transgender people from sex-separated activities or spaces, categorically banning 100% of transgender people born in Wyoming from amending their birth certificates under any circumstances is not a rational means of achieving that goal. *See Nehring*, 582 P.2d at 78-79 (“fail[ing] to see how total denial of recovery . . . can rationally be found to promote the legislative ends” and finding categorical approach “reminiscent of employing a cannon to kill a flea”); *Romer*, 517 U.S. at 632 (finding law irrational where its justifications failed to match its breadth). Rather, the Policy is grossly overbroad even on its own terms. As the Governor put it, apparently “[i]f it’s worth doing, it’s certainly worth overdoing.”

Wyoming law also does not even look to amended birth certificates in regulating sex separation. Instead, the law defines male and female by reference to reproductive systems. *See, e.g.*, Wyo. Stat. Ann. § 21-3-137(a). For example, even if K.R. were a student seeking to participate on a female-designated sports team at a public school, her amended birth certificate would not allow her to do so. Wyo. Stat. Ann. § 21-25-301(a) (defining sex by reference to reproductive system) & (d) (providing that a statement of sex on the student’s birth certificate is only valid “if the statement was entered at or near

the time of the student’s birth or modified to correct a clerical error”). More generally, Wyoming could rely on an individual’s original birth certificate—*regardless* of whether it was subsequently amended. Indeed, because not all Wyoming residents were born in Wyoming, and other states allow transgender people to correct their birth certificates to match their gender identity, the State must already rely on other means of determining a person’s sex. And if it can do so for residents born out-of-state, there is no reason it cannot do the same for residents born in-state. The relief sought by K.R.—which merely consists of providing her with an amended certificate—does not prevent the State from looking to an original certificate for any lawful purpose.

The district court’s reliance on the Sixth Circuit opinion in *Gore v. Lee*, 107 F.4th 548 (6th Cir. 2024), which addressed a Tennessee birth certificate statute, cannot save the Policy here.¹⁶ As a threshold matter, that decision was based on the federal constitution;

¹⁶ The district court also relied on *Gore* for the proposition that Wyoming law “does not result in disparate treatment of similarly situated groups.” TR-127. Nowhere did *Gore* make that holding or suggest that it need not even apply rational basis review. That would improperly conflate the question of whether discrimination *exists* with the question of whether it is *justified*. See, e.g., *Griffith*, 129 F.4th at 815 (“if two people cannot be ‘similarly situated’ because they have a different biological sex, then no sex discrimination claim would ever succeed”); *Free the Nipple-Fort Collins*, 916 F.3d at 805 (noting that equal protection “require[s] more—not less—judicial scrutiny when asserted physical differences are raised to justify gender-based discrimination”).

but the federal rational basis test is not identical in all respects to the rational relationship test under the Wyoming Constitution. Indeed, the author of *Gore* specifically observed that Wyoming’s jurisprudence is unique—and that is a virtue: “state court judges and lawyers should never assume that what is good for the U.S. Constitution is necessarily good for the Wyoming Constitution.” Hon. Jeffrey S. Sutton, *The Independent Role of State Constitutions in Protecting Liberty, Equality and Property*, Wyo. Law., February 2025, at 34, 35. “American federalism requires no less. It gives state citizens two opportunities, not just one, to protect their rights.” *Id.* And of particular relevance here: “As the Wyoming Supreme Court suggested some 30 years ago, the Wyoming Constitution’s approach to equal protection might call for a different manner of review. . . and [] call for more careful review.” *Id.* at 37.

Even among federal courts, *Gore* does not represent a majority view. Many other federal courts have concluded that restrictions on transgender people’s ability to correct identity documents run afoul of the U.S. Constitution. *See, e.g., F.V.*, 286 F. Supp. 3d at 1145; *H.R.*, 745 F. Supp. 3d at 852; *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018); *Ray*, 507 F. Supp. 3d at 932; *Love*, 146 F. Supp. 3d at 856-57. And state courts have likewise concluded that banning transgender people from access to identity documents consistent with their gender identity violates state constitutional protections. *See K.L.*, 2012 WL 2685183, at *4-7.

Gore itself was also not a unanimous decision. As the dissent explained, Tennessee’s policy embodied “gratuitous” discrimination in light of the fact that “[t]he State keeps its own records of sex assigned at birth,” thus begging the question of why “it

must also force transgender individuals to hold and use birth certificates reflecting their sex assigned at birth rather than their gender identity.” 107 F.4th at 578. The *Gore* majority failed to provide any convincing answer to that critical question. And that question is even more pressing here, given that Wyoming previously *allowed* transgender people to amend their birth certificates, whereas Tennessee had not done so. *Gore* neglected that the government must not only have a “plausible policy reason for the classification”—the classification must also “rationally further[]” that interest. *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). When a policy is utterly ineffective, “the relationship [between] the classification [and] its goal is ... so attenuated as to render the distinction arbitrary or irrational” even under the federal constitution. *Id.* As the Governor explained, the Policy here neither “improve[s] current policies” nor “strengthen[s] existing safeguards.” Gordon Letter (Mar. 14, 2025).

III. The Policy Violates the Right to Privacy under the Wyoming Constitution.

A. The Wyoming Constitution Protects the Fundamental Right of Privacy.

“Wyoming’s commitment to individual privacy interests is well established.” *Howard v. Aspen Way Enters., Inc.*, 2017 WY 152, ¶ 22, 406 P.3d 1271, 1277 (Wyo. 2017). In 1895, shortly after adoption and ratification of the Wyoming Constitution in 1889, this Court articulated that the right to liberty was adaptable, agreeing that “it is better not to go too far back into antiquity for the best securities for our ‘ancient liberties,’” and that “the liberties of the people have been preserved and developed by a progressive growth and wise adaptation of new circumstances and situations.” *In re Boulter*, 5 Wyo. 329, 40 P. 520, 522 (1895) (quotes omitted). By 1935, this Court

explicitly noted Wyomingites possess a “right to privacy, the right to be let alone.” *Town of Green River v. Bunger*, 50 Wyo. 52, 58 P.2d 456 (1936).

Under the Wyoming Constitution, a fundamental right can be guaranteed either explicitly or implicitly. *Mills v. Reynolds*, 837 P.2d 48, 53-54 (Wyo. 1992); *Johnson*, 2026 WY 1, ¶ 46, 582 P.3d at 398. This Court has recognized the fundamental right to privacy is independently protected under state constitutional provisions unique to Wyoming, including the Unenumerated Rights Clause. *Emp. Sec. Comm’n of Wyoming v. W. Gas Processors, Ltd.*, 786 P.2d 866, 873 (Wyo. 1990); *see also* Wyo. Const., art. 1, §§ 2, 4, 6, 7.

The Wyoming Constitution is no less protective of informational privacy than the U.S. Constitution, which also protects a fundamental right to privacy. *White v. State*, 784 P.2d 1313, 1314 (Wyo. 1989) (“We have observed in this regard that the due process and equal protection guaranties of the federal Bill of Rights serve as a minimum standard for the protection of individual liberties and that the Wyoming Constitution may legitimately expand those safeguards.”). The Tenth Circuit, for example, has recognized a constitutional right to privacy across a range of contexts. *See, e.g., Eastwood v. Dep’t of Corrs.*, 846 F.2d 627, 630 (10th Cir. 1988) (privacy in sexual matters); *A.L.A. v. W. Valley City*, 26 F.3d 989, 990 (10th Cir. 1994) (privacy in HIV test results); *Lankford v. City of Hobart*, 27 F.3d 477, 479 (10th Cir. 1994) (privacy in medical records); *Sheets v. Salt Lake Cnty.*, 45 F.3d 1383, 1388 (10th Cir. 1995) (privacy in diary); *Anderson v. Blake*, 469 F.3d 910, 915 (10th Cir. 2006) (privacy in videotape of alleged rape). “We have long held that the constitutional right to privacy prohibits the government from

inquiring into or disclosing private information.” *Stewart v. City of Oklahoma City*, 47 F.4th 1125, 1137 (10th Cir. 2022). Because the U.S. Constitution sets a floor of protection, Wyoming’s right to informational privacy is at least as robust, if not more so, than federal authority.

When a statute burdens a fundamental right, the court “must strictly scrutinize that statute to determine if it is necessary to achieve a compelling state interest” and “the burden is on the State to demonstrate that it could not use a less onerous alternative to achieve its objective.” *Mills*, 837 P.2d at 53; *Johnson*, 2026 WY 1, ¶ 52, 582 P.3d at 400.

B. Transgender Status Is Highly Personal and Intimate Information Protected by the Right to Privacy.

The Policy infringes upon K.R.’s right to privacy by causing the involuntary disclosure of her transgender status, which courts have consistently recognized is precisely the kind of highly personal and intimate information that warrants constitutional protection.

In *Anderson*, the Tenth Circuit expressly agreed that “[t]he excruciatingly [sic] private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate.” 469 F.3d at 915 (quoting *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999)). Indeed, simply being transgender “is likely to provoke both an intense desire to preserve one’s medical confidentiality, as well as hostility and intolerance from others.” *Powell*, 175 F.3d at 111. Other courts have similarly recognized that a person’s transgender status is protected by the constitutional right to privacy and that relegating transgender people to identity documents that disclose their transgender status infringes upon that right. *See, e.g., Ray*, 507 F. Supp. 3d at 932

(holding that birth certificate policy disclosed transgender status, which is “highly personal” information “protected by the due process clause’s informational right to privacy”); *Arroyo Gonzalez*, 305 F. Supp. 3d at 333 (“there are few areas [with] more closely intimate facts of a personal nature than one’s transgender status”); *Love*, 146 F. Supp. 3d at 853-56 (holding that driver’s license policy threatened disclosure of private and intimate information concerning one’s transgender status).

Transgender people have good reason to safeguard their status: in addition to revealing highly private information, its involuntary disclosure can expose them to discrimination and harassment as well as jeopardize their physical safety and bodily integrity.¹⁷ *See Ray*, 507 F. Supp. 3d at 934 (emphasizing the “heightened risk of harm transgender people face when forced to disclose”); *Powell*, 175 F.3d at 111. “A mismatch between the gender indicated on the document and the gender of the holder calls down discrimination.” *Adkins*, 143 F. Supp. 3d at 139-40; *Ray*, 507 F. Supp. 3d at 934 (describing expert testimony “about how being forced to disclose documents with the wrong sex listed leads some transgender individuals to not pursue jobs, services, or opportunities because they are fearful of pushback and humiliation”). There remains “a great deal of animosity towards the transgender community,” as confirmed by a “plethora” of evidence—including disturbing hate crime statistics. *Love*, 146 F. Supp. 3d at 855-56; TR-35. Compromising that privacy puts transgender people at great risk of

¹⁷ While these additional harms are not necessary to support a right to privacy, they reinforce the high stakes in the involuntary disclosure of one’s transgender status.

harassment, discrimination, and even violence. And these concerns have only compounded amid the current wave of government action targeting transgender people. *Supra* § II.B.

C. The Policy Infringes Upon K.R.’s Right to Privacy.

Neither of the district court’s bases for rejecting K.R.’s privacy claim have any merit. First, the district court held that the Policy “does not impede on her privacy” because it “mandates how a state agency is to record the facts of a person’s birth.” TR-129. But the privacy infringement at issue does not flow from the State’s mere recording of a person’s assigned sex—which, as explained above, K.R. does not challenge. Rather, the privacy infringement flows from the copy of the certificate that the State provides to K.R. in order to prove her identity. That unamended certificate causes the unwanted disclosure of her transgender status whenever she uses it in ordinary and statutorily anticipated ways.

Second, the district court held that WDOH’s rules limit its disclosure of birth certificates. TR-129. But the government is responsible for the disclosures that it causes—regardless of whether it engages in those disclosures itself or causes disclosure by other means. If the government issued business cards to its transgender employees saying “transgender” on them, it could hardly absolve itself of responsibility for violating their privacy by arguing that it had not directly disclosed their status to others.

As other courts have recognized in analogous contexts, the State bears responsibility for privacy violations caused by the Policy it has created and enforced. Even where the agency responsible for vital records “is not the entity requiring disclosure

or the entity actually disclosing the information,” “the threat of disclosure is imposed indirectly by the government through its birth certificates.” *Ray*, 2019 WL 11791719, *10. The State thus cannot credibly claim that it played “no part in the forced disclosure of Plaintiffs’ transgender status.” *Id.* Similarly, in *K.L.*, the court recognized that the government did not directly disclose the party’s transgender status, but it held that its driver’s license policy nonetheless caused the privacy violations. 2012 WL 2685183, at *6; *see also Love*, 146 F. Supp. 3d at 852 (holding that plaintiffs stated a valid privacy claim based on a policy that “indirectly requires them to reveal their transgender status ... to all who see [their] licenses”). Courts have also recognized that the violation of privacy “is not limited to the state’s disclosure of personal information—it also includes a plaintiff’s compelled disclosure of personal information.” *Botello v. Morgan Hill Unified Sch. Dist.*, No. C09-02121 HRL, 2009 WL 3918930, at *4 (N.D. Cal. Nov. 18, 2009). Notably, the State does not provide birth certificates for people to keep hidden under lock and key; it provides people with copies of their own birth certificates so they can be used as identification.

Indeed, the Policy forces transgender people to make a Hobson’s choice: they must either (a) forego the use of their birth certificates and the benefit of such use that others freely enjoy or (b) compromise highly personal and intimate information and expose themselves to harm whenever they present their birth certificates to others. “Plaintiffs cannot avoid such disclosure unless ... [they] forego participating in public life—‘determining eligibility for employment, obtaining other identity documents [], establishing school records, proving age, and enrolling in government programs.’” *Ray*,

2019 WL 11791719, at *10. And the State admits that birth certificates are used for “serious government purposes.” TR-84. But the government cannot force people to choose between a valuable benefit and a constitutionally protected right. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *accord Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013); *Ray*, 2019 WL 11791719, at *10. In other words, the government may not accomplish indirectly that which it could not accomplish directly.

For all these reasons, the Policy burdens the fundamental right to privacy and requires strict scrutiny. Even assuming that the State could substantiate that maintaining an accurate record of assigned sex constituted a *compelling* government interest—and that there was “an actual problem that need[ed] solving,” *Johnson*, 2026 WY 1, ¶ 81—the Policy lacks even a rational relationship to that goal. *Supra* § II.B. Original birth certificates remain unaffected by amended birth certificates. For the same reason, the State also cannot demonstrate that there are no less onerous alternatives to achieve its goal. As the Governor candidly explained, any of the State’s goals are already achieved whether the Act exists or not.

CONCLUSION

“A prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded.” *Virginia*, 518 U.S. at 557. That principle applies with even greater force to the Wyoming Constitution.

For the foregoing reasons, the order of the district court should be reversed.

Dated: March 12, 2026

Respectfully submitted,



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Certificate of Filing and Service

I certify that on the 12th day of March, 2026, I electronically filed Appellant's Brief using the court's Appellate C-Track and Electronic Filing Portal (CTEF) system, which will send notification of such filing to the following counsel of record:

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Erik Oblasser

IN THE SUPREME COURT, STATE OF WYOMING

IN RE: CORRECTION OF VITAL
RECORD,

KAYLA ROYLANCE,

Appellant
(Petitioner),

v.

S-26-0014

STATE OF WYOMING, ex rel.,
DEPARTMENT OF HEALTH,
DIVISION OF VITAL STATISTICS
SERVICES,

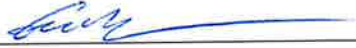
Appellee
(Respondent).

APPENDIX OF APPELLANT'S BRIEF

1. Order Denying Petition for Correction and Re-Issue of Vital Record
2. Statement of Costs

Dated: March 12, 2026

Respectfully submitted,


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and Re-Issue of Vital Record” pursuant to Wyo. Stat. Ann. § 35-1-424. [Pet. at 1] Petitioner requests this Court to issue an order requiring the Wyoming Department of Health (WDOH) to “change the Petitioner’s sex on her birth certificate to female, (F)” and to “correct and re-issue a birth certificate indicating Petitioner’s correct name pursuant to the Court’s 2021 order[.]” [Id. at 2]

II. Discussion

A. Relevant Legal Principles, Statutes, Agency Rules, and Case Law

This case requires the Court to interpret various statutes and rules. Courts must “give effect to the intent of the legislature” based on the “plain and ordinary meaning of the words used in a statute.” *Bain v. City of Cheyenne*, 2025 WY 67, ¶ 12, 570 P.3d 725, 729 (Wyo. 2025). Part of this process involves considering “all statutes relating to the same subject or having some general purpose in pari materia.” *Id.* The same principles apply when a court interprets agency rules. *See, e.g., State v. Uinta Cnty. Assessor*, 2024 WY 106, ¶ 21, 557 P.3d 298 (Wyo. 2024).

i. The Vital Records Act

The Vital Records Act requires the WDOH to “establish a state office of vital records services, which shall install, maintain, and operate the system of vital records throughout this state.” Wyo. Stat. Ann. § 35-1-402. “Vital records” include “records of birth.” Wyo. Stat. Ann. § 35-1-401(a)(i). The statute defines “vital records” and “system of vital records.” Wyo. Stat. Ann. § 35-1-401(a)(i) (“Vital records’ means records of birth, death, stillbirth, marriage, divorce and data relating thereto[.]”); Wyo. Stat. Ann. § 35-1-401(a)(ii) (“System of vital

records' includes the registration, collection, preservation, amendment, and certification of vital records and activities related thereto including the tabulation, analysis, and publication of statistical data derived from such records[.]”).

When it comes to birth certificates, Wyo. Stat. Ann. § 35-1-410 requires a certificate of birth for each live birth that occurs in the state be filed with the local registrar of the district in which the birth occurs within 10 days after the birth. Wyo. Stat. Ann. § 35-1-410(a). When a birth occurs in an institution, or en route thereto, the person in charge of the institution or a designated representative must obtain the personal data, prepare the certificate, obtain the required signatures, and file it with the local registrar. Wyo. Stat. Ann. § 35-1-410(b). The person in attendance must “certify to the facts of the birth” and provide the medical information required by the certificate within seven days after the birth. *Id.* By contrast, when a birth occurs outside an institution, the certificate must generally be prepared and filed by the physician in attendance at, or immediately after, the birth. Wyo. Stat. Ann. § 35-1-410(c).

Regarding the heart of this case, Wyo. Stat. Ann. § 35-1-424 governs correction and amendment of vital records. Subsection (a) provides:

(a) A certificate or record registered under this act may be **amended** only in accordance with this act and regulations thereunder adopted by the division of health and medical services to **protect the integrity and accuracy of vital records**. A certificate that is amended under this section shall be marked “Amended” except as provided in subsection (d) of this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record.

(emphasis added). Subsection (b) addresses additions and minor corrections within one year of birth. Wyo. Stat. Ann. § 35-1-424(b). Subsection (c) addresses the amendment of certificates following name changes. Wyo. Stat. Ann. § 35-1-424(c) (“Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or his parent, guardian, or legal representative, the state registrar of vital records shall amend the certificate to reflect the new name, by attaching an abstract of the court order.”). And, finally, subsection (d) prohibits corrections from being made “on the face of the certificate” after one year. Wyo. Stat. Ann. § 35-1-424(d).

That’s it. Since § 35-1-424 was enacted in 1973, the Legislature has neither amended it nor elaborated on how the agency, let alone a court, should interpret it.

ii. WDOH Rules

The WDOH rules regarding corrections and amendments to vital records went into effect on April 21, 2008, and do not appear to have been amended since then. *Rules Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10.¹ There are seven sections:

- Section 1. General Provisions for Amendments within the First Year.
- Section 2. General Provisions for Amendments after the First Year.
- Section 3. Amendments by Court Order.
- Section 4. Birth Certificate Correction.
- Section 5. Death Certificate Correction.
- Section 6. Marriage Certificate Correction.
- Section 7. Divorce Certificate Correction.

¹ Only Chapter 10 of the WDOH, Vital Records Services rules appear to be relevant to this case.

Section 3 authorizes “[a]ny item on a certificate” to be changed upon receipt of a certified copy of a court order:

Section 3. Amendments by Court Order.

(a) Any item on a certificate can be changed upon receipt of a certified copy of a court order from a court of competent jurisdiction.

(b) The court order must be specific as to the changes to be made on the certificate.

(c) If the court order specifies that a new certificate be prepared, the original certificate and relevant correspondence shall be retained on file in Vital Records Services. The new certificate shall be prepared on the form in use at the time the original certificate was prepared if possible.

(d) If the court order does not specify that a new certificate be prepared, an abstract of the court order will be attached to the existing certificate. The abstract will state the date of the order, the order number, the name and location of the court, the data appearing on the original certificate that is to be changed and the new data. The abstract will become part of the certificate.

(e) The certified copy of the court order will be retained by Vital Records Services.

Section 4 addresses birth certificate correction, with subsection (e) specifically addressing “[s]ex as stated on a birth certificate”:

Section 4. Birth Certificate Correction.

. . . .

(e) Sex as stated on birth certificate.

(i) Within the first year the certificate may be amended by the hospital or by a statement from the attending physician.

(ii) After the first year the certificate may be amended by an affidavit and a statement from a physician.

(iii) When the sex of an individual has been changed, a court order shall be required to amend the birth certificate.

As one can see, the WDOH appears to use “correct” and “amend” interchangeably, either intentionally or unintentionally.

iii. House Enrolled Act No. 73 – What is a Woman Act

House Enrolled Act No. 73, the “What is a Woman Act,” went into effect on March 14, 2025, without the Governor’s signature.² This act created a new statute, Wyo. Stat. Ann. § 8-1-110. Title 8 governs how to interpret statutes.

Subsection (a) of the statute defines “sex,” “female,” and “male” “with respect to the application of a person’s biological sex under any law or rule and regulation in this state:

8-1-110. References to males and females; separate accommodations for males and females; data reporting requirements.

(a) Notwithstanding any other provision of law, with respect to the application of a person’s biological sex under any law or rule and regulation in this state, the following definitions and standards shall apply:

(i) A person’s “sex” means the person’s biological sex, either male or female, at birth;

(ii) “Female” means a person who has, had, will have or would have had, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports and utilizes eggs for fertilization;

² Available at <https://wyoleg.gov/Legislation/2025/HB0032>.

(iii) “Male” means a person who has, had, will have or would have had, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports and utilizes sperm for fertilization;

Wyo. Stat. Ann. § 8-1-110(a)(i)–(iii).³

Subsection (d) requires data collection regarding sex to be based upon a person’s sex at birth.

Any school district, or public school thereof, and any state agency, department, office or other political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data shall, when identification by sex is used, identify each person who is part of the collected data set as either male or female consistent with the persons sex at birth.

Wyo. Stat. Ann. § 8-1-110(d).

In Governor Gordon’s letter explaining why he was allowing the “What is a Woman Act” to go into law without his signature, the Governor stated that the “Act begs questions of necessity and issues of practical administration.”⁴ He further stated that the Act did not “outline any specific issues it seeks to resolve.” The Governor then highlighted that he had already signed “Senate Enrolled Act 53-Sex-designated facilities and public schools,” as well as “House Enrolled Act

³ Subsection (a) also defines “woman,” “girl,” “man,” “boy,” “mother,” and “father”; states that the term “equal” with respect to biological sex does not mean “same” or “identical”; states that, “[w]ith respect to biological sex, the term ‘equal’ does not mean ‘same’ or ‘identical’”; states that, “[w]ith respect to biological sex, separate accommodations are not inherently unequal”; and states that “[a] person born with a medically recognized condition of a disorder or difference in sex development shall not be denied legal protections and accommodations afforded under applicable law.” Wyo. Stat. Ann. § 8-1-110(a)(iv)–(ix).

⁴ Available at <https://governor.wyo.gov/state-government/bills>.

94-Protecting women’s privacy in public spaces act.”⁵ Both of those acts, he stated, “provide targeted, enforceable solutions to ensure security and fairness in public spaces.” Accordingly, regardless of whether the “What is a Woman Act” was “signed, not signed, or vetoed,” he stated that “Wyoming citizens can rest assured that Wyoming law recognizes that ‘male’ and ‘female’ are based on biological sex at birth – full stop.”

iv. Senate Enrolled Act 53 – Sex-designated facilities and public schools

Senate Enrolled Act 53, which went into effect on March 3, 2025, relates to school districts.⁶ The act generally requires public school children to use restrooms, sex-designated changing facilities and sleeping quarters that align with their sex at birth. The act defines “sex” to mean “a person’s biological sex, either male or female.” Wyo. Stat. Ann. § 21-3-137(a)(vi). It does not contain the “at birth” phrase found in Wyo. Stat. Ann. § 8-1-110(a)(i).

v. House Enrolled Act 48 – Protecting privacy in public spaces act

House Enrolled Act 48, which is effective July 1, 2025, relates to the administration of the government.⁷ The act generally specifies requirements for the use of sex-designated restrooms, showers, sleeping quarters and locker room facilities at public facilities. The act provides for complaints and civil actions,

⁵ The reference to “House Enrolled Act 94-Protecting women’s privacy in public spaces act” appears to be a reference to House Enrolled Act 48-Protecting privacy in public spaces act, as there was no House Enrolled Act 94 during the 2025 General Session.

⁶ Available at <https://wyoleg.gov/Legislation/2025/SF0062>.

⁷ Available at <https://wyoleg.gov/Legislation/2025/HB0072>.

specifies duties for public entities, provides definitions, and makes conforming amendments. The act defines “sex” the same as Senate Enrolled Act 53. Wyo. Stat. Ann. § 9-25-101(a)(x).

vi. *MH v. First Jud. Dist. Ct. of Laramie Cnty.*, 2020 WY 72, 465 P.3d 405 (Wyo. 2020).

MH is the sole case in which the Wyoming Supreme Court has interpreted § 35-1-424 and the relevant agency rules outlined above. Notably, the *MH* decision predates the enactment of HEA 73, SEA 53, and HEA 48.

The main issue before the Court in *MH* was whether the district court had the authority to hear *MH*'s petition for a court order requiring WDOH to amend the sex on *MH*'s birth certificate. *Id.* ¶¶ 1–3, 465 P.3d at 406. *MH*'s birth certificate listed her as male, but she identified and presented herself as female. *Id.* ¶ 3, 465 P.3d at 406. When *MH* sought to change the sex on her birth certificate, WDOH informed her that it could not do so without a court order that met WDOH regulations. *Id.* *MH* then petitioned the district court for an order recognizing her change of sex and gender under its “power of general jurisdiction” and Wyo. Stat. Ann. § 35-1-424(a). *Id.* The district court decided it lacked subject matter jurisdiction and denied her petition. *Id.* *MH* appealed, and the Wyoming Supreme Court reversed. *Id.*

In concluding that the district court had subject matter jurisdiction over *MH*'s petition, the Court analyzed the Vital Records Act and the WDOH rules. Significantly, the Court not only determined that the district court had jurisdiction to hear the petition but also suggested that amending a certificate to reflect gender confirmation surgery results was authorized by law and WDOH

regulations. *Id.* ¶¶ 14–15, 465 P.3d at 409–10.

[S]ection 35-1-424(a) allows amendment to vital records “in accordance with [the Act] *and* regulations thereunder adopted by [WDOH] to protect the integrity and accuracy of vital records.” (Emphasis added.) Contrary to the district court’s assertion, the WDOH regulations providing for amendment of “any item” (including sex) on a birth certificate do not constitute an attempt by the WDOH “to create subject matter jurisdiction in the district courts.” Rather, they are a proper exercise of the WDOH’s legislatively delegated authority under section 35-1-424(a), which charges the WDOH with maintaining “the integrity and accuracy of vital records.” If a person’s sex—or any other information on a vital record—is incorrect, inability to amend that information would undermine the accuracy of her vital records. Amendment of inaccurate information falls squarely within the legislative intent to “protect the integrity and accuracy of vital records.” When we apply the presumption “that the legislature has acted in a thoughtful and rational manner with full knowledge of existing law, ...” *Sullivan v. State*, 2019 WY 71, ¶ 10, 444 P.3d 1257, 1260 (Wyo. 2019), we must conclude that it did not intend to provide a mechanism for correction of some information on a birth certificate while leaving other, inaccurate, information in place. The WDOH regulation allowing amendment of a person’s sex on her birth certificate does not “modify, dilute or change in any way the statutory provisions from which [the WDOH] derives its authority.” *In re Billings*, 2001 WY 81, ¶ 24, 30 P.3d 557, 568 (Wyo. 2001) (quoting *Platte Dev. Co. v. State, Envtl. Quality Council*, 966 P.2d 972, 975 (Wyo. 1998)). Thus, once M.H. invoked the jurisdiction of the district court by presenting a case “belonging to a general class over which the authority of the court extends,” *Harmon*, 2014 WY 90, ¶ 46, 331 P.3d at 1187 (quoting *Brown*, 2011 WY 35, ¶ 44, 248 P.3d at 1146), “the district court had the power to hear and decide the case and enter judgment,” *Harmon*, 2014 WY 90, ¶ 42, 331 P.3d at 1186 (quoting *Brown*, 2011 WY 35, ¶ 45, 248 P.3d at 1147). Because we conclude that the Vital Records Act provides the district court subject matter jurisdiction to address M.H.’s petition for sex change, we do not consider other bases for that outcome.

Id. ¶ 14, 465 P.3d at 409–10.

In his special concurrence, Justice Kautz emphasized that the Court had gone beyond the specific issue of a court’s subject matter jurisdiction. Although he agreed with the majority that the district court had jurisdiction over MH’s petition, he wrote separately because he felt the majority inappropriately expanded their analysis to interpret and advise on how the Vital Records Act and the WDOH regulations applied to MH’s case. *Id.* ¶¶ 16, 18, 465 P.3d at 410–11.

Justice Kautz raised three concerns about how the majority interpreted the statutes and rules. First, he expressed worry about the relationship between Chapter 10, §§ 3(a) and 4 of the WDOH rules.

While § 3(a) of Chapter 10 of the WDOH regulations allows “any item” on a “certificate” to be changed with a court order, § 4 pertains specifically to corrections of birth certificates. Notably, § 4 does not allow correction of “any item” but is limited to corrections to “given names,” “surnames,” “date, place and hour of birth,” and “sex.” Section 4(b), (c), (d), (e). The opinion suggests a broad reading of § 3(a), but to do so renders § 4 meaningless. We avoid such interpretations. *See Britain v. Britain (Matter of Est. of Britain)*, 2018 WY 101, ¶ 28, 425 P.3d 978, 987 (Wyo. 2018).

Id. ¶ 23, 465 P.3d at 411–12.

Second, he noted that most people fail to distinguish between “sex” and “gender.” *Id.* ¶ 25, 465 P.3d at 412. He pointed out that these “may be two different things in today’s world,” and the birth certificate form only mentioned “sex” and not “gender.” *Id.*

Finally, Justice Kautz questioned whether the WDOH regulations might be invalid if they do indeed allow a person to change the “sex” on their birth

certificate based on how they identify or because they have had a “sex-change.” *Id.* ¶¶ 27–30, 465 P.3d at 412–13. *See, e.g., Diamond B. Servs., Inc. v. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo. 2005) (“[A]dministrative agencies are bound to comply with their enabling statutes”; “[a]n administrative rule or regulation which is not expressly or impliedly authorized by statute is without force or effect if it adds to, changes, modifies, or conflicts with an existing statute.”) (citations omitted); *Disciplinary Matter of Billings*, 2001 WY 81, ¶¶ 25–27, 30 P.3d 557, 569 (Wyo. 2001) (concluding rules promulgated by Wyoming State Board of Outfitters and Professional Guides were invalid because they went beyond the authority granted to the Board by statute).

He highlighted that the Vital Records Act authorizes the WDOH to promulgate regulations “to protect the integrity and accuracy of vital records,” Wyo. Stat. Ann. § 35-1-424(a). *Id.* ¶ 28, 465 P.3d at 412. And he cited Wyo. Stat. Ann. § 35-1-410 to support the notion that the purpose of a birth certificate is to record “the facts of birth.” *Id.* Accordingly, he concluded that amendment of a birth certificate is only warranted if the birth certificate inaccurately states the “facts of birth.” *Id.* He suggested that allowing a person to change the “sex” on their birth certificate because they identify as “female” or have had a “sex-change” surgery would undermine the “integrity and accuracy” of the birth certificate because it would no longer reflect the facts of that person’s birth. *Id.* ¶ 29, 465 P.3d at 412.

Justice Kautz cautioned that “much more [] could be involved in an analysis of the regulations and statutes,” highlighting that the issue was not

presented to the Court and was beyond the issue presented on appeal. *Id.* ¶ 31, 465 P.3d at 413.

On remand, MH submitted a renewed petition along with a request for an order recognizing her change of sex and gender. The district court determined that MH was entitled to the relief she sought, noting that she had demonstrated in good faith that she qualified for an amended birth certificate showing her transition from male to female, in accordance with Wyo. Stat. Ann. § 35-1-424 and Chapter 10, §§ 3 and 4 of the WDOH rules. Consequently, the court granted MH's renewed petition and ordered issuance of a new birth certificate indicating her sex as female. It appears that the court did not address the issues raised by Justice Kautz in his concurrence.

B. *MH's dicta* does not control this Court's interpretation of § 35-1-424, the WDOH rules, or the statutes enacted after *MH*.

Before analyzing the Court's interpretation of the statutes and rules discussed above, it is important to consider the impact of *MH* on that analysis. Specifically, does *MH* represent the idea that a court can order an executive agency to amend a birth certificate after gender confirmation surgery? Or does *MH* only apply to the specific issue raised regarding subject matter jurisdiction? For the reasons explained below, this Court believes it must be the latter.

No trial court may disregard binding precedent established by a higher court. The challenge for a trial court often involves how to handle dicta when it appears and relates to the issues before that court. Many opinions include dicta that address issues or reach conclusions unnecessary for the case's final ruling. However, sometimes it can be unclear which parts of an appellate opinion are

binding. Rarely does an appellate court explicitly label a passage as non-binding dicta. Nonetheless, the Supreme Court has shown disapproval when a trial court or litigant relies on dicta from a prior case. *See, e.g., Patterson v. State*, 2025 WY 30, ¶ 19, 565 P.3d 692, 698 (Wyo. 2025) (“That dichotomy was dicta and legally unsound.”); *Holding v. Luckinbill*, 2022 WY 10, ¶ 19, 503 P.3d 12, 18 (Wyo. 2022) (“In short, the footnote is obiter dictum and lacks precedential force.”); *Garza v. State*, 2020 WY 32, ¶ 10, 458 P.3d 1239, 1241 (Wyo. 2020) (“[T]he footnote in [the prior case] is dicta, and thus should not be relied upon as substantive authority.”); *In Interest of DJS-Y*, 2017 WY 54, ¶ 9, 394 P.3d 467, 470 (Wyo. 2017) (“That observation did not reflect the facts of the case, however, and was not essential to our decision. It is properly categorized as dictum and ‘lack[s] the force of an adjudication.’”) (citing *Black’s Law Dictionary* 454 (6th ed. 1990)); *Butler v. Halstead By & Through Colley*, 770 P.2d 698, 700 (Wyo. 1989) (“The perception of the district court is understandable, but it is not what the court intended. The awkward language is obiter dictum. The rule of stare decisis limits [the prior case] to the facts there[.]”); *Bales v. Brome*, 53 Wyo. 370, 380, 84 P.2d 714, 717 (Wyo. 1938) (“The authority of a former decision as a precedent must be limited to the points actually decided on the facts before the court.”).

When a trial court encounters clear dicta, it must carefully consider whether the Supreme Court’s statements, even if dicta, indicate how it would rule if the issue were properly before it. *See Madison v. Marlatt*, 619 P.2d 708, 714 (Wyo. 1980) (“It is proper for the supreme court to decide incidental questions which are bound to arise again on a new trial, and decisions thereon

cannot be regarded as obiter dictum.”). To maintain predictability, uphold the principle of stare decisis, and dutifully follow the holding and “spirit” of a higher court’s opinion, a trial court should generally err on the side of caution and follow the dicta. However, caution cannot lead a trial court to follow dicta blindly. See *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821) (“It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.”); *Alexander v. Balt. Ins. Co.*, 8 U.S. (4 Cranch) 370, 379 (1808) (“It is extremely dangerous to take general dicta upon supposed cases not considered in all their bearings, and, at best, inexplicitly stated as establishing important law principles.”). In rare cases, it may be necessary to go beyond dicta in a prior case to fulfill a trial court’s duty to apply the law as it is and not as others may think it ought to be. This situation is one such rare instance.

The initial task is to identify which part of an opinion is dicta and which part is binding precedent. The Supreme Court uses the “classic definition” of what is dicta:

The word is generally used as an abbreviated form of obiter dictum, “a remark by the way;” that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. Statements and comments in an

opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication.

Claim of Moriarity, 899 P.2d 879, 885 n.6 (Wyo. 1995) (citing *Black's Law Dictionary* 454 (6th ed. 1990)). In contrast, a court is better off focusing on the ratio decidendi of an opinion. See, e.g., *Coyler v. State, Dept. of Transp.*, 2009 WY 43, ¶ 17, 203 P.3d 1104, 1108 (Wyo. 2009); *Jacobs v. Wyo. Med. Comm'n*, 2005 WY 104, ¶ 3, 118 P.3d 441, 443–44 (Wyo. 2005); *Davila v. State*, 815 P.2d 848, 849 (Wyo. 1991); *Weterling v. Eisele*, 682 P.2d 1055, 1059 (Wyo. 1984).

MH was a straightforward case about a district court's jurisdiction. Clearly, as the Court held in *MH*, a district court has general jurisdiction over a wide range of matters due to its broad constitutional authority. The unambiguous language in § 35-1-424, along with the resulting WDOH rules, provides a district court with jurisdiction over the issuance of birth certificate amendments. It cannot be seriously disputed that that was the only issue before the Court in *MH*. As noted, however, *MH* appeared to venture beyond the discrete jurisdictional question and opine on when a petition seeking the amendment of a birth certificate must be granted. Applying the Supreme Court's strict definition of what is nonbinding dicta, if one were to remove everything in *MH* outside the issue of when a district court has subject matter jurisdiction, the holding in *MH* would not change in any way. This leads to the conclusion that any reading of *MH* that suggests the relief requested in *MH*'s petition, similar to the relief requested in this case, was required, is nonbinding dicta.

C. The applicable Wyoming statutes do not require the WDOH to

change a person's birth certificate after gender confirmation surgery.

Chapter 10, § 3(a) allows “any item” on a birth certificate to be changed with a court order. Nowhere in the enabling statute is there mention of a court order being required. Moreover, § 3’s court order requirement does not elaborate on why it is required or how a court is to evaluate when a change is permitted. Notwithstanding these issues, § 4 specifically pertains to the correction of birth certificates. A broad reading of § 3(a) to allow a person to seek a court order to change anything on their birth certificate would render § 4 effectively meaningless. A court must construe statutes and rules in *pari materia* so that it does not render parts of the statute or rule at issue, or any other statute or rule, meaningless.

Section 35-1-424(a) gives the WDOH authority to promulgate regulations “to protect the integrity and accuracy of vital records.” The Legislature has clearly stated that the purpose of a birth certificate is to record “the facts of birth.” *See, e.g.,* Wyo. Stat. Ann. § 35-1-410(b). One could then reasonably conclude that, under § 35-1-424(a), an amendment to a birth certificate is appropriate only if the birth certificate inaccurately states the “facts of birth.” Amendment because a person identifies as “female,” identifies as “male,” or has had a gender confirmation surgery runs headfirst into the Legislature’s mandate that a birth certificate record the “facts of birth.” To the extent the WDOH regulations can be read to allow such a change, the regulations are void because they conflict with the Vital Records Act. *See, e.g., Diamond B. Servs., Inc.*, ¶ 60, 120 P.3d at 1048; *Disciplinary Matter of Billings*, ¶¶ 25–27, 30 P.3d at 569.

The statutes and rules in *MH* have not been altered. However, recent statutory enactments, especially § 8-1-110, affect how these statutes and rules apply to this case. Specifically, § 8-1-110 requires that state agencies responsible for vital statistics document a person's sex based on the sex at birth. If WDOH can change a birth certificate because a court order directs it, regardless of whether that order conflicts with the "facts of birth," it effectively bypasses the purpose of § 8-1-110. It is not a court's role to decide what the law should be or to evaluate the wisdom of a statute or policy. Instead, a court's only responsibility is to interpret the law as it is written.

That said, Petitioner argues that if this Court applies § 8-1-110, the law violates her right to equal protection under both the Wyoming and U.S. Constitutions; alternatively, she claims it infringes on her privacy and her right to "medical decision making." The Court disagrees.

All persons are guaranteed equal protection under the law. *See Jewkes v. State*, 2022 WY 90, ¶ 18, 513 P.3d 154, 160 (Wyo. 2022); *Martin v. Bd. of Cnty. Comm'rs. of Laramie Cnty.*, 2022 WY 21, ¶ 12, 503 P.3d 68, 72–73 (Wyo. 2022). If a law treats different groups differently, or if a statute treats everyone the same, there can be no equal protection violation.

As it pertains to this case, § 8-1-110 does not result in disparate treatment of similarly situated groups. *See Gore v. Lee*, 107 F.4th 548, 555 (6th Cir. 2024). Rather, it mandates how a state agency is to maintain state records. It defines "sex" for all persons the same: that being the sex of a person "at birth." Petitioner conflates "sex," described in biological terms, with "gender," which is a social

construct.⁸

Petitioner contends that § 8-1-110 impermissibly treats her and others differently based on sex. Her argument, however, was recently rejected by the United States Supreme Court. *United States v. Skrmetti*, 145 S.Ct. 1816 (2025).⁹ The Court reasoned that a law that forbade the use of puberty blockers for minors did not discriminate based on sex. *Id.* As it applies to this case and Petitioner’s equal protection argument, “the law does not prohibit conduct for one sex that it permits for the other.” *Id.* at 1831.

Petitioner’s reliance on *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020), fares no better. In *Bostock*, the Court held that under Title VII an employer cannot fire an employee for being homosexual or transgender. *Id.* In *Skrmetti*, the Court concluded that, even if *Bostock* applied, a person’s transgender status was not the “but-for” reason for their inability to receive the treatment they sought. *Skrmetti*, 145 S.Ct. at 1834. As in *Skrmetti*, Petitioner’s transgender status is not the “but for” reason for her inability to force the State to change the sex on her birth certificate.¹⁰

Petitioner’s argument that § 8-1-110 violates the Wyoming Constitution also fails. She contends that § 8-1-110 violates her right to make medical decisions guaranteed by Article 1, Section 38. Yet, within her argument she

⁸ The Court is aware that this conclusion itself is not absolute and remains a topic of debate in society, in the medical field, and in the laws that states enact.

⁹ Neither Petitioner nor the Attorney General addressed *Skrmetti* in their briefing.

¹⁰ Because the Court concludes that there is no disparate treatment, based on sex or otherwise, the Court does not reach the question regarding whether § 8-1-110 as it applies to this case passes the rational-basis test.

concedes that she “is not estopped from seeking medical treatment she seeks.” Rather, she posits that the violation of her medical decision-making is because she cannot have the State change the sex on her birth certificate in “recognition of said treatment.” She does not provide any persuasive argument that what’s recorded on the State’s records at a person’s birth comes within Section 38’s requirements.

Finally, Petitioner’s argument that § 8-1-110 violates her right to privacy is misplaced. She contends, “the inconsistent information that would suddenly be available to third parties through the legislature’s actions would plainly reveal the inconsistency of the Petitioner’s vital record and her appearance. Thus, the “information” in this case implicates Petitioner’s constitutional right to informational privacy[.]” Her argument of forced disclosure ignores several points. For one thing, § 8-1-110 does not impede on her privacy. Rather, it mandates how a state agency is to record the facts of a person’s birth. For another, she ignores that Wyo. Stat. Ann. § 35-1-426 forbids disclosure of a person’s birth certificate. *See also Rules Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 12, § 1 (delineating those authorized to obtain a birth record to be the registrant, a parent/guardian, their attorney, or the judicial branch of other agency “if needed in the performance of their duties”).

III. Conclusion

For the reasons discussed above, the Court concludes that Petitioner’s

petition must be, and hereby is, DENIED.¹¹

IT IS ORDERED that the Petition is DENIED.

DATED this 9th day of October 2025.

BY THE COURT:



Joshua C. Eames
District Court Judge



CERTIFIED

TO BE A FULL TRUE AND
CORRECT COPY

10/10/2025

Samantha Paulson

Deputy Clerk



Jill Kiester
Clerk of District Court
Natrona County

¹¹ The Court does not address Petitioner’s contention that, even if § 8-1-110 is constitutional, her case falls within the exception for “[a] person born with a medically recognized condition of a disorder or difference in sex development shall not be denied legal protections and accommodations afforded under applicable law.” She argues that gender dysphoria applies to this exception. Neither Vital Records nor any other agency has denied Petitioner’s request to change her birth certificate or any other record in the face of § 8-1-110’s exception. Consequently, the Court does not find that her argument is ripe for a decision. *See, e.g., Jacobs v. State*, 2004 WY 136, ¶ 8, 100 P.3d 848, 850-51 (Wyo. 2004).

IN THE SUPREME COURT, STATE OF WYOMING

IN RE: CORRECTION OF VITAL
RECORD,

KAYLA ROYLANCE,

Appellant
(Petitioner),

v.

S-26-0014

STATE OF WYOMING, ex rel.,
DEPARTMENT OF HEALTH,
DIVISION OF VITAL STATISTICS
SERVICES,

Appellee
(Respondent).

STATEMENT OF COSTS

The Appellant, by and through the undersigned counsel, and pursuant to W.R.A.P. 10.01, itemizes the Appellant's costs herein as follows:

1. The Appellant paid the Clerk of the District Court \$100.00 upon filing the Notice of Appeal.
2. The Appellant paid the Clerk of the Supreme Court \$140.00 upon filing the Notice of Appeal.
3. The Appellant paid the court reporter, Jacqueline Gainer, a fee of \$173.25 on November 5, 2025, for preparation of the original Hearing on Petition transcript.
4. To date, the total cost incurred by the Appellant for this appeal is: \$413.25. Such amount has been paid in full by the Appellant.

Dated: March 12, 2026

Respectfully submitted,



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