

**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). )

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**BRIEF OF APPELLEE**

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## TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES.....	iii
STATEMENT OF JURISDICTION .....	1
STATEMENT OF THE ISSUES .....	2
STATEMENT OF THE CASE .....	3
I. Nature of the Case .....	3
II. Facts Relevant to the Issues Presented for Review and Relevant Procedural History .....	4
III. Rulings Presented for Review .....	5
ARGUMENT	
I. To protect the integrity and accuracy of vital records, the applicable Wyoming statutes preclude amendment of a birth certificate to reflect a sex other than the sex assigned at birth .....	8
A. Standard of Review .....	8
B. Standard for Interpretation of Statutes and Agency Rules .....	8
C. The Correction and Amendment of Vital Records statute and the corresponding Department rule address amendment of vital records .....	9
1. The Vital Records Act and the Correction and Amendment of Vital Records Statute - Wyo. Stat. Ann. § 35-1-424(a) .....	9
2. The Department rule addressing change in sex on a birth certificate read in conjunction with the Vital Records Act .....	10
D. The What Is a Woman Act.....	12
1. The What Is a Woman Act applies to birth certificates issued by the Department .....	13
2. The Legislative purpose of the What Is a Woman Act as determined by statements made by two legislators during a debate .....	16

3. The caselaw on Kansas’s Women’s Bill of Rights Act is distinguishable.....	18
E. Read in <i>pari materia</i> , the What Is a Woman Act, rather than Correction and Amendment of Vital Records statute and the Department’s corresponding rule, controls amendment of a person’s sex on birth certificates .....	20
II. The Act does not violate Appellant’s right to equal protection under the Wyoming Constitution .....	24
A. Standard of Review .....	25
B. The Act does not violate equal protection because it does not create a legislative classification and applies equally to similarly situated persons.....	26
1. The Act does not create a legislative classification .....	26
2. The Act does not treat similarly situated person unequally .....	30
a. The Act does not treat Appellant unequally based on sex.....	31
b. The Act does not treat Appellant unequally based on transgender status .....	39
C. The Act is subject to the rational relationship test used by this Court since Johnson 1992 .....	40
D. The equal protection test Appellant uses is no longer used by this Court.....	40
1. The Act is rationally related to a legitimate government objective .....	44
III. The Wyoming Constitution does not confer or protect a right to privacy as Appellant alleges, and the Act does not violate any right to privacy.....	50
A. Standard of Review .....	51
B. The Wyoming Constitution does not confer or protect a general right “to be let alone” by the State .....	51
CONCLUSION .....	56
CERTIFICATE REGARDING ELECTRONIC FILING AND FILING .....	57

## TABLE OF CASES AND AUTHORITIES

### Cases

<i>Adekale v. State</i> , 2015 WY 30, 344 P.3d 761 (Wyo. 2015).....	15
<i>Allhusen v. State ex rel. Wyo. Mental Health Pros. Licensing Bd.</i> , 898 P.2d 878 (Wyo. 1995) .....	41, 42, 43, 48
<i>Anderson v. Crouch</i> , 169 F.4th 474 (4th Cir. 2026).....	38
<i>Baessler v. Freier</i> , 2011 WY 125, 258 P.3d 720 (Wyo. 2011).....	51, 53, 55
<i>Bain v. City of Cheyenne</i> , 2025 WY 67, 570 P.3d 725 (Wyo. 2025).....	16
<i>Bankers Standard Ins. Co. v. JTEC, Inc.</i> , 2025 WY 51, 567 P.3d 1183 (Wyo. 2025).....	8
<i>Barlow Ranch, Ltd. P’ship v. Greencore Pipeline Co. LLC</i> , 2013 WY 34, 301 P.3d 75 (Wyo. 2013).....	17
<i>Bird v. Wyo. Bd. of Parole</i> , 2016 WY 100, 382 P.3d 56 (Wyo. 2016).....	26, 43, 44
<i>Black v. State</i> , 820 P.2d 969 (Wyo. 1991) .....	54
<i>Bostock v. Georgia</i> , 590 U.S. 644 (2020) .....	32, 33, 36, 37
<i>Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne</i> , 371 P.2d 409 (Wyo. 1962) .....	35
<i>Cir. Ct. of Eighth Judicial Dist. v. Lee Newspapers</i> , 2014 WY 101, 332 P.3d 523 (Wyo. 2014).....	16
<i>Crouch v. Anderson</i> , 145 S. Ct. 2835 (2025) .....	37, 38

<i>D.T. v. Christ</i> , 552 F. Supp. 3d 888 (D. Ariz. 2021).....	35
<i>Duke v. State</i> , 2009 WY 74, 209 P.3d 563 (Wyo. 2009).....	12
<i>Emp. Sec. Comm’n of Wyo. v. W. Gas Processors</i> , 786 P.2d 866 (Wyo. 1990) .....	53, 54
<i>F.V. v. Barron</i> , 286 F. Supp. 3d 1131 (D. Idaho 2018).....	35
<i>Fertig v. State</i> , 2006 WY 148, 146 P.3d 492 (Wyo. 2006).....	52
<i>Fowler v. Stitt</i> , 104 F.4th 770 (10th Cir. 2024).....	35, 36, 37
<i>Gore v. Lee</i> , 107 F.4th 548 (6th Cir. 2024).....	passim
<i>Greenwalt v. Ram Rest. Corp. of Wyo.</i> , 2003 WY 77, 71 P.3d 717 (Wyo. 2003).....	passim
<i>Griffith v. El Paso Cnty., Colo.</i> , 129 F.4th 790 (10th Cir. 2025).....	35, 36, 37
<i>Grimm v. Gloucester Cnty. Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020).....	35, 37, 38
<i>Groenberg v. Teton Cnty. Hous. Auth.</i> , 2011 WY 13, 247 P.3d 35 (Wyo. 2011).....	22
<i>Hageman v. Goshen Cnty. Sch. Dist. No. 1</i> , 2011 WY 91, 256 P.3d 487 (Wyo. 2011).....	30
<i>Hardison v. State</i> , 2022 WY 45, 507 P.3d 36 (Wyo. 2022).....	25, 43, 44
<i>Herrick v. Jackson Hole Airport Bd.</i> , 2019 WY 118, 452 P.3d 1276 (Wyo. 2019).....	23

<i>Hicks v. State</i> , 2025 WY 113, 578 P.3d 366 (Wyo. 2025).....	passim
<i>Hill v. Colorado</i> , 530 U.S. 703 (2000) .....	52
<i>Hodes &amp; Nauser, MDs, P.A. v. Schmidt</i> , 440 P.3d 461 (Kan. 2019).....	54
<i>Hoem v. State</i> , 756 P.2d 780 (Wyo. 1988) .....	49
<i>Howard v. Aspen Way Enters., Inc.</i> , 2017 WY 152, 406 P.3d 1271 (Wyo. 2017).....	51, 52, 53, 54
<i>In re Birkholz</i> , 2019 WY 19, 434 P.3d 1102 (Wyo. 2019).....	8
<i>In re Neely</i> , 2017 WY 25, 390 P.3d 728 (Wyo. 2017).....	43
<i>In re ECH</i> , 2018 WY 83, 423 P.3d 295 (Wyo. 2018).....	14
<i>Johnson v. Safeway Stores, Inc.</i> , 568 P.2d 908 (Wyo. 1977) .....	22
<i>Johnson v. State Hearing Examiner’s Off.</i> , 838 P.2d 158 (Wyo. 1992) .....	24, 41
<i>Kadel v. Folwell</i> , 100 F.4th 122 (4th Cir. 2024).....	37, 38
<i>Katz v. United States</i> , 389 U.S. 347 (1967) .....	52, 54
<i>Kunz v. Allen</i> , 172 P. 532 (Kan. 1918).....	54
<i>Lincoln Cnty. Sch. Dist. No. 1 v. State</i> , 985 P.2d 964 (Wyo. 1999) .....	24

<i>Lynch v. State</i> , 2026 WY 8, 582 P.3d 908 (Wyo. 2026).....	8
<i>L.W. ex rel. Williams v. Skrmetti</i> , 83 F.4th 460 (6th Cir. 2023) .....	32
<i>Martin v. Bd. of Cnty. Comm’r of Laramie Cnty.</i> , 2022 WY 21, 503 P.3d 68 (Wyo. 2022).....	43, 44
<i>Merchant v. State Dep’t of Corr.</i> , 2007 WY 159, 168 P.3d 856 (Wyo. 2007).....	30
<i>MH v. First Jud. Dist. Ct. of Laramie Cnty.</i> , 2020 WY 72, 465 P.3d 405 (Wyo. 2020).....	4, 10, 18
<i>Monaghan Farms, Inc. v. Bd. of Cnty. Comm’rs of Albany Cnty.</i> , 2023 WY 31, 527 P.3d 1195 (Wyo. 2023).....	9
<i>Mountain Cement Co. v. S. of Laramie Water &amp; Sewer Dist.</i> , 2011 WY 81, 255 P.3d 881 (Wyo. 2011).....	17
<i>Nehring v. Russell</i> , 582 P.2d 67 (Wyo. 1978) .....	49
<i>Newport Int’l Univ., Inc. v. State, Dep’t of Educ.</i> , 2008 WY 72, 186 P.3d 382 (Wyo. 2008).....	24, 41, 44
<i>Olmstead v. United States</i> , 277 U.S. 438 (1928) .....	52
<i>Ostrowski v. State</i> , 665 P.2d 471 (Wyo. 1983) .....	52
<i>Pavesich v. New England Life Ins. Co.</i> , 50 S.E. 68 (Ga. 1905) .....	54
<i>Phoenix Vintners, LLC v. Noble</i> , 2018 WY 87, 423 P.3d 309 (Wyo. 2018).....	9, 17
<i>Powder River Coal Co. v. Wyoming State Bd. of Equalization</i> , 2002 WY 5, 38 P.3d 423 (Wyo. 2002).....	9

<i>Rock v. Lankford</i> , 2013 WY 61, 301 P.3d 1075 (Wyo. 2013).....	22
<i>Saunders v. Hornecker</i> , 2015 WY 34, 344 P.3d 771 (Wyo. 2015).....	51
<i>Schweiker v. Wilson</i> , 450 U.S. 221 (1981) .....	45
<i>Skoric v. Park Cnty. Cir. Ct., Fifth Jud. Dist.</i> , 2023 WY 59A, 532 P.3d 667 (Wyo. 2023).....	17
<i>Solvay Chems., Inc. v. Wyo. Dep’t of Revenue</i> , 2022 WY 124, 517 P.3d 1146 (Wyo. 2022).....	8, 9
<i>State ex. rel. Kobach v. Harper</i> , 571 P.3d 6 (Kan. Ct. App. 2025).....	18, 19
<i>State v. Laude</i> , 654 P.2d 1223 (Wyo. 1982) .....	27, 30
<i>Stitt v. Fowler</i> , 145 S. Ct. 2840 (2025) .....	35, 36, 37
<i>Town of Green River v. Bunger</i> , 58 P.2d 456 (Wyo. 1936) .....	51
<i>United States v. Morton Salt Co.</i> , 338 U.S. 632 (1950) .....	52
<i>United States v. Skrmetti</i> , 605 U.S. 495 (2025) .....	passim
<i>Vasquez v. State</i> , 990 P.2d 476 (Wyo. 1999) .....	42, 43
<i>Vincent v. Bondi</i> , 127 F.4th 1263 (10th Cir. 2025).....	36-37
<i>Wilson v. State ex rel. Off. of Hearing Exam’r</i> , 841 P.2d 90 (Wyo. 1992) .....	41

<i>Winston v. Lee</i> , 470 U.S. 753 (1985) .....	52
--	----

<i>Woods v. State</i> , 2017 WY 111, 401 P.3d 962 (Wyo. 2017).....	53
---	----

**Statutes**

Kan. Stat. Ann. § 77-207 (West) .....	18, 19
---------------------------------------	--------

Wyo. Stat. Ann. § 8-1-110.....	passim
--------------------------------	--------

Wyo. Stat. Ann. § 14-2-401 through -408.....	48
--	----

Wyo. Stat. Ann. § 35-1-240.....	10
---------------------------------	----

Wyo. Stat. Ann. § 35-1-401.....	14, 46
---------------------------------	--------

Wyo. Stat. Ann. §§ 35-1-401 through -431.....	20
---	----

Wyo. Stat. Ann. § 35-1-402.....	10
---------------------------------	----

Wyo. Stat. Ann. § 35-1-409.....	10
---------------------------------	----

Wyo. Stat. Ann. § 35-1-409 through -410.....	6
--	---

Wyo. Stat. Ann. § 35-1-410.....	3, 6, 10, 13, 14
---------------------------------	------------------

Wyo. Stat. Ann. § 35-1-424.....	passim
---------------------------------	--------

**Other Authorities**

1890 Wyo. Sess. Laws, Ch. 35-38.....	42
--------------------------------------	----

2026 Kan. Sess. Laws, Ch. 3 .....	20
-----------------------------------	----

Alaska Const. art. 1.....	53
---------------------------	----

Ariz. Const. art. 2.....	53
--------------------------	----

Cal. Const. art. 1 .....	53
--------------------------	----

Fla. Const. art. 1.....	53
-------------------------	----

Haw. Const. art. 1 .....	53
Ill. Const. art. 1 .....	53
<i>Justice Stevens’ Equal Protection Jurisprudence</i> , 100 Harv. L. Rev. 1146 (1987).....	41
La. Const. art. 1 .....	53
Mont. Const. art. 2.....	53
N.H. Const., Bill of Rights art. 2-a.....	53
Nowak, Rotunda, and Young, <i>Constitutional Law</i> , ch. 16 (1978).....	27
Rep. Jarvis Amendment HB0032H2001 to H.B. 32, 68th Leg., 2025 Gen. Sess. (Wyo. 2025), <a href="https://www.wyoleg.gov/Legislation/2025/HB0032">https://www.wyoleg.gov/Legislation/2025/HB0032</a> .....	17
Robert B. Keiter & Tim Newcomb, <i>The Wyoming Constitution: A Reference Guide</i> (1993).....	42, 43
S.C. Const. art. 1 .....	53
Wash. Const. art. 1.....	53
Wyo. Const. art. 1 .....	42, 52
Wyo. Const. art. 5.....	1
Wyo. Const. art. 6.....	53
Wyoming House Floor Session-Day 4, January 17, 2025-AM, at 40:34 to 41:39 (YouTube), <a href="https://www.youtube.com/watch?v=cT_iAshxEcw">https://www.youtube.com/watch?v=cT_iAshxEcw</a> .....	17

**Rules**

<i>Rules, Wyo. Dep’t of Health, Vital Records Servs.</i> , Ch. 10 (2008).....	6, 9, 11, 12, 20, 21
<i>Rules, Wyo. Dep’t of Health, Vital Records Servs.</i> , Ch. 10 (2026).....	11, 22, 48, 49
Wyo. R. App. P. 1.05.....	1

Wyo. R. App. P. 2.01 ..... 1

## STATEMENT OF JURISDICTION

This appeal arises from an order denying Appellant's request to have the sex designation changed on Appellant's birth certificate. The District Court for the Seventh Judicial District, Natrona County, Wyoming entered the order on October 9, 2025. (R. at 110-30). The district court's order is appealable as a final decision on the merits of Appellant's request. Wyo. R. App. P. 1.05. Under Rule 2.01 of the Wyoming Rules of Appellate Procedure, Appellant timely filed a notice of appeal within thirty days, on November 6, 2025. (*Id.* at 143-46). Therefore, jurisdiction for the order denying Appellant's petition is vested in this Court under article 5, section 2 of the Wyoming Constitution.

## STATEMENT OF THE ISSUES

1. Did the district court correctly rule the What Is a Woman Act prohibits a change to the sex designation on Appellant's birth certificate from male to female?
2. Did the district court correctly rule the What Is a Woman Act does not violate Appellant's equal protection right or right to privacy under the Wyoming Constitution?

## STATEMENT OF THE CASE

### I. Nature of the Case

This appeal arises from the district court's denial of Appellant's petition to correct and reissue a revised birth certificate. The court ruled the What Is a Woman Act and Wyo. Stat. Ann. § 35-1-410 require birth certificates indicate a person's sex at birth, thus prohibiting any subsequent change to the contrary. It further held neither the What Is a Woman Act, Wyo. Stat. Ann. § 8-1-110, nor the Correction and Amendment of Vital Records statute, Wyo. Stat. Ann. § 35-1-424, require the Department to change a person's birth certificate following gender transition. The court also ruled the What Is a Woman Act is constitutional and does not violate equal protection or Appellant's right to privacy.

Appellant presents two issues for this Court to review. First, Appellant contends the district court incorrectly interpreted the Correction and Amendment of Vital Records statute § 35-1-424, and the What Is a Woman Act, § 8-1-110. (*See generally* Appellant's Br.). Appellant asserts the correct statutory interpretation of § 35-1-424 and § 8-1-110 allows the Department to change the sex designation on Appellant's birth certificate from male to female to reflect Appellant's gender identity. (*Id.* at 10-20). Appellant reasons the Department can update sex designations on newly issued and amended birth certificates since the original is kept on file and no current laws, including the What Is a Woman Act, prohibit doing so. (*Id.* at 10-11). Appellant relies on the older, less specific Correction and Amendment of Vital Records statute instead of the newer, more specific What Is a Woman Act, in arguing a statutory basis for changing the sex designation on Appellant's birth certificate. (*Id.* at 11-20).

Second, Appellant contends that if the What Is a Woman Act prohibits the Department from changing the sex identifier on a birth certificate, it violates the equal protection provisions of the Wyoming Constitution. (*Id.* at 20-46). Appellant also claims interpreting the What Is a Woman Act as a prohibition on the Department making such change violates a right to privacy under the Wyoming Constitution. (*Id.* at 46-52).

## **II. Facts Relevant to the Issues Presented for Review and Relevant Procedural History.**

Appellant resides in Casper, Natrona County, Wyoming. (Appellant's Br. at 3). Appellant was born male, and the Department issued a birth certificate identifying Appellant as male. (Appellant's Br. at 3). On February 12, 2025, Appellant petitioned the Seventh Judicial District Court under § 35-1-424 for an order directing the Department to correct and reissue Appellant's birth certificate to reflect female gender identity. (R. at 3-10). Appellant also filed with the petition a letter from a physician in Thailand, stating that Appellant changed gender from male to female. (*Id.* at 9-10).

The district court set the matter for a hearing on April 17, 2025. (R. at 13-14). The order setting the hearing directed Appellant to be prepared to address several judicial inquiries at the hearing. (*Id.*). Specifically, whether the Vital Records Act and Department rules authorize correcting and reissuing a vital record (a birth certificate) in light of the What Is a Woman Act, and what effect *MH v. First Judicial District of Laramie County*, 2020 WY 72, 465 P.3d 405 (Wyo. 2020), has on that process. (*Id.*).

Appellant filed a memorandum answering the court's questions prior to the hearing. (R. at 24-43). Appellant served a copy of the response on the Wyoming Attorney General's office on April 15, 2025, because it included constitutional concerns. (*Id.* at 43).

The court held the hearing as scheduled and heard testimony from Dr. Tess Kilweina and argument from Appellant's counsel. (*See* Tr. of April 17, 2025 hr'g). The Attorney General's office was not provided notice of the hearing and did not attend. (R. at 13-14; Tr. of April 17, 2025 hr'g at 1).

On April 29, 2025, in response to Appellant's memorandum, the Attorney General's office filed a notice of its intent to appear and be heard on the constitutional claims. (R. at 52-55). The Department asked the court to consider briefing from the parties on the constitutionality of the What Is a Woman Act. (*Id.* at 52-54). The court allowed briefing and set a briefing schedule. (*Id.* at 56). After the briefing was complete, the court issued an order denying Appellant's petition to correct and re-issue a vital record. (*Id.* at 110-42).

### **III. Rulings Presented for Review**

On October 9, 2025, the district court entered an order denying Appellant's petition to correct and re-issue a vital record (birth certificate). (*Id.*). The court ruled the What Is a Woman Act, when read in conjunction with the Correction and Amendment of Vital Records statute, prohibited the Department from changing the sex identifier on a birth certificate. (*Id.* at 110-30). The court also ruled the What Is a Woman Act did not violate Appellant's constitutional rights to equal protection and privacy. (*Id.*)

## ARGUMENT

Appellant asked the district court for an order directing the Department to change the “sex” designation on Appellant’s birth certificate from Appellant’s biological sex at birth to Appellant’s gender identity. The district court correctly concluded the What Is a Woman Act prohibits such a change.

Wyoming law has long required a “certificate of birth for each live birth” in the state to be filed in the state’s vital records system. Wyo. Stat. Ann. § 35-1-410. These certificates must include the “facts of birth” and information required by the federal government. *Id.* §§ 35-1-409 through -410(b). Among items the Department puts on the birth certificate is the sex of the newborn child. Wyoming law provided a general provision for “correction and amendment” of all vital records under regulations adopted by the Wyoming Department of Health - Vital Records Services. *Id.* § 35-1-424(a). Under the authority of § 35-1-424(a), the Department adopted rules in 1993 stating it could change any item on a vital records certificate based on a court order, and that “[w]hen the sex of an individual has been changed, a court order shall be required to amend the birth certificate.” *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10, § 3(a), § 4(e)(iii) (2008).

Then the Wyoming Legislature enacted the What Is a Woman Act (the Act), effective March 24, 2025, which directs:

- (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[.]

(d) 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 person's sex at birth.

Wyo. Stat. Ann. § 8-1-110(a)(i) & (d).

The language of the Act is clear. The Act requires birth certificates only reflect a person's biological sex at birth. It applies "notwithstanding any other provision of law" and, therefore, overrides other statutes and regulations including § 35-1-424(a) and the Department rule. As a result, the district court lacks authority to issue Appellant's requested order, and the Department has no authority to record any certificate indicating a sex other than Appellant's biological sex at birth.

The Department will first address the statutory requirements for issuance and correction or amendment of a birth certificate. To the extent the What Is a Woman Act and the Correction and Amendment of Vital Records statute, §§ 8-1-110 and 35-1-424, respectively, conflict, the What Is a Woman Act controls.

Next, the Department will address how the Act applies similar legal standards to similarly situated classifications and does not treat similarly situated people unequally in violation of equal protection guaranteed by the Wyoming Constitution. Even if we assume for the sake of argument the Act treats similarly situated persons unequally, it affects only an ordinary interest and meets constitutional requirements because it is rationally related to several legitimate state objectives. The Act also does not violate any privacy right

because the Wyoming Constitution does not explicitly confer a fundamental right “to be let alone.”

**I. To protect the integrity and accuracy of vital records, the applicable Wyoming statutes preclude amendment of a birth certificate to reflect a sex other than the sex assigned at birth.**

The What Is a Woman Act prohibits the relief sought by Appellant in this case because creating a new or amended birth certificate requires identifying Appellant by sex different than Appellant’s sex at birth. The first step is to interpret the Act itself.

**A. Standard of Review**

Appellant’s claim of error requires this Court to interpret the What Is a Woman Act, the Correction and Amendment of Vital Records statute, and the Department’s rules. Statutory interpretation is a question of law that this Court review *de novo*. *Lynch v. State*, 2026 WY 8, ¶ 5, 582 P.3d. 908, 909 (Wyo. 2026) (citing *In re Birkholz*, 2019 WY 19, ¶ 13, 434 P.3d 1102, 1105 (Wyo. 2019)).

**B. Standard for Interpretation of Statutes and Agency Rules**

When interpreting a statute, this Court seeks “to give effect to the intent of the legislature[.]” *Solvay Chems., Inc. v. Wyo. Dep’t of Revenue*, 2022 WY 124, ¶ 8, 517 P.3d 1146, 1149 (Wyo. 2022) (citations omitted). Legislative intent “must be ascertained initially and primarily from the words used in the statute.” *Id.* This “Court’s longstanding method of statutory interpretation begins by first determining if the statute in question is clear and unambiguous or ambiguous or subject to varying interpretations.” *Bankers Standard Ins. Co. v. JTEC, Inc.*, 2025 WY 51, ¶ 14, 567 P.3d 1183, 1188 (Wyo. 2025) (cleaned up) (citation omitted). “A statute is clear and unambiguous if its wording is such

that reasonable persons can agree to its meaning.” *Solvay Chems.*, ¶ 13, 517 P.3d at 1150 (cleaned up) (citation omitted). This Court considers “the ordinary and obvious meaning of the words employed according to their arrangement and connection.” *Phoenix Vintners, LLC v. Noble*, 2018 WY 87, ¶ 15, 423 P.3d 309, 313 (Wyo. 2018) (citations omitted). It “construe[s] the statute as a whole, giving effect to every word, clause, and sentence, and [it] construe[s] all parts of the statute in *pari materia*.” *Monaghan Farms, Inc. v. Bd. of Cnty. Comm’rs of Albany Cnty.*, 2023 WY 31, ¶ 24, 527 P.3d 1195, 1206 (Wyo. 2023) (citations omitted). “When a statute is sufficiently clear and unambiguous, [this Court] give[s] effect to the plain and ordinary meaning of the words and do[es] not resort to the rules of statutory construction.” *Phoenix Vintners*, ¶ 15, 423 P.3d at 313 (citations omitted).

“The rules of statutory interpretation also apply to the interpretation of administrative rules and regulations.” *Powder River Coal Co. v. Wyoming State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002).

**C. The Correction and Amendment of Vital Records statute and the corresponding Department rule address amendment of vital records.**

Appellant seeks to amend a birth certificate under the Correction and Amendment of Vital Records statute and the associated Department rule. *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10, § 4(e)(iii) (2008).

**1. The Vital Records Act and the Correction and Amendment of Vital Records Statute – Wyo. Stat. Ann. § 35-1-424(a)**

The Department of Health is the state agency tasked with promoting and protecting public health through an extensive list of broad statutory powers and duties pertaining to public health. *See* Wyo. Stat. Ann. § 35-1-240. In the Vital Records Act, the Legislature

directed the Department to “establish a state office of vital records services, which shall install, maintain, and operate the system of vital records throughout this state.” *Id.* § 35-1-402.

Among the Department’s powers and duties is the power “[t]o collect, compile and tabulate reports of ... births[.]” *Id.* § 35-1-240(a)(vii); *see also Id.* § 35-1-410(a) (requiring filing of a certificate of birth within 10 after birth). Birth certificates contain important personal data and information necessary for the government to carry out public health functions. *Id.* §§ 35-1-409(a), -410.

Under § 35-1-424, a person may request to correct or amend a vital record, provided the change follows the specific procedures and Department regulations designed to ensure the record’s accuracy and integrity. Section 35-1-424(a) states:

(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.

Section 35-1-424(a) applies to birth certificates. *See MH*, ¶ 6, 465 P.3d at 407.

## **2. The Department rule addressing change in sex on a birth certificate read in conjunction with the Vital Records Act.**

As clearly stated in § 35-1-424(a), the Department was charged with adopting regulations to protect the integrity and accuracy of vital records when they are amended. The Department adopted a rule specifically addressing amendment of the sex designation on a birth certificate:

(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.

*Rules, Wyo. Dep't of Health, Vital Records Servs.*, Ch. 10, § 4(e) (2008).<sup>1</sup> In addition, “[a]ny item on a certificate can be changed upon receipt of a certified copy of a court order from a court of competent jurisdiction.” *Rules, Wyo. Dep't of Health, Vital Records Servs.*, Ch. 10, § 3(a) (2008).

Reading the plain language of § 35-1-424(a) and chapter 10 § 4(e) of the Department’s rules together, a birth certificate “may be amended” when the sex of a person

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<sup>1</sup> Effective March 13, 2026, the Department amended Chapter 10, Section 4(e) of its Rules regarding amendment of sex on birth certificates. It now states:

(e) Sex as stated on birth certificate.

(i) The sex may only be amended by receipt of a signed statement from the hospital or attending physician where the birth occurred indicating sex at birth. In the absence of the above, the State Registrar may correct the sex designation on a birth record if there is acceptable evidence that an error occurred in the recording of the person's sex at the time of birth. If the State Registrar believes the evidence submitted by the applicant is fraudulent, inadequate, or not authentic, the application for a change to the sex designation will be denied, whereupon the applicant will be advised in writing of the State Registrar's decision.

*Rules, Wyo. Dep't of Health, Vital Records Servs.*, Ch. 10, § 4(e) (2026).

has changed. “As a general matter, the word “may” when used in a statute, is permissive.” *Duke v. State*, 2009 WY 74, ¶ 34, 209 P.3d 563, 574 (Wyo. 2009). Neither § 35-1-424(a) nor the Department rule mandate the change be made. *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10, § 4(e) (2008). Considering just § 35-1-424(a) in conjunction with the Department’s rule, the Department could have, but was not required to, grant Appellant’s request.

However, once the Legislature enacted the What Is a Woman Act, the possibility ended of amending the sex designation on a birth certificate. The Act clearly and specifically prohibits amending a vital record, including a birth certificate, to reflect anything but the biological sex of a person at birth.

#### **D. The What Is a Woman Act**

To resolve the issues presented by Appellant, this Court must also interpret the What Is a Woman Act, which supersedes the Department’s Chapter 10 rule allowing amendment of sex on a birth certificate. Recall, the Act provides in pertinent part:

**(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;

(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;

...

(d) 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 person’s sex at birth.**

Wyo. Stat. Ann. § 8-1-110(a)(i) – (iii) & (d) (emphasis added).

**1. The What Is a Woman Act applies to birth certificates issued by the Department.**

Wyoming Statute §§ 8-1-110(a) and (d) are unambiguous. The Act broadly and unambiguously provides the Act’s definitions and standards apply to all laws or rules and regulations in Wyoming when identifying a person’s sex. *Id.* § 8-1-110(a). The Act defines “sex” as “the person’s biological sex, either male or female, at birth.” *Id.* § 8-1-110(a)(i). The Act’s definition of “sex” hinges on the temporal modifier “at birth.” *Id.* Reading the definitions of “male” and “female” *in pari materia*, biological sex is fixed by the reproductive system present at birth. *Id.* § 8-1-110(a)(i)-(iii). Consequently, the Act precludes any subsequent change to a person’s biological sex with “respect to the application of a person’s biological sex under any law or rule and regulation in this state.” *Id.* Section 35-1-410(b) requires the appropriate official “certify to the facts of the birth and provide the medical information required by the certificate.” A Birth certificate includes the child’s sex at birth. Under the plain and unambiguous language of § 8-1-110(a), notwithstanding any other provision of law (including § 35-1-424(a) and the

associated Department rule), the sex identifier on a state-issued birth certificate must remain the person's sex at birth. It cannot be changed.

After broadly defining the words used in the Act, the legislature detailed more specific requirements in the other subsections. *Id.* § 8-1-110. Subsection (d) applies the rule of law set out in subsection (a) to vital statistics. As relevant here, subsection (d) applies when agencies such as the Department collect vital statistics for the purpose of “gathering accurate public health, crime, economic or other data.” *Id.* Consistent with subsection (a), subsection (d) requires that, “when identification by sex is used, [the Department must] identify each person who is part of the collected data set as either male or female consistent with the person's sex at birth.”

Birth certificates are vital records used by the Department under § 8-1-110(d) to collect vital statistics for accurate “public health data,” including information about the number of live births and the sex of the babies. *See id.* §§ 35-1-401(a)(i), (iii), (iv), & (v); -410; 8-1-110(d).

The Legislature made the requirements of subsection (d) compulsory. The Department “**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.” *Id.* § 8-1-110(d) (emphasis added). As this Court has repeatedly and routinely held, the use of “shall” in a statute is mandatory. *In re ECH*, 2018 WY 83, ¶ 25, 423 P.3d 295, 303 (Wyo. 2018). After the word “shall,” subsection (d) establishes a condition for when the mandate applies. “[W]hen identification by sex is used, [in the data set collected].” Wyo. Stat. Ann.

§ 8-1-110(d). That condition is met in this case because a birth certificate includes a sex identifier – male or female.

Reading subsection (d) *in pari materia* with the definition of sex and the requirement in subsection (a) that all laws requiring “the application of a person’s biological sex” use the person’s sex at birth the plain meaning of the What Is a Woman Act is clear. The Act mandates the Department use a person’s biological sex at birth as the sex identifier on a person’s birth certificate regardless of whether the certificate is new or amended. This requirement applies notwithstanding § 35-1-424(a) and the Department’s rule allowing amendment of the sex identifier on a birth certificate.

Instead of recognizing the plain meaning interpretation of the Act, Appellant selectively reads the Act and adds words that are not in the law. (*See* Appellant’s Br. at 16). Appellant does not contest that § 8-1-110 applies to birth certificates. Appellant claims the Act simply requires the Department to collect and record the sex assigned to a person at birth on the “original” birth certificate but does not prohibit the Department from issuing an amended birth certificate consistent with the person’s gender identity. Appellant inserts the word “original” without warrant, and in so doing, ignores the plain language and applicable definitions of the Act, which require all laws applying a person’s biological sex and vital statistics collected by state agencies to reflect the person’s sex at birth. *Id.* To amend a birth certificate to reflect a sex identification other than the person’s sex at birth violates § 8-1-110.

This Court does not “add language [to a statute] or choose other words to change the meaning of a statute.” *Adekale v. State*, 2015 WY 30, ¶ 13, 344 P.3d 761, 765 (Wyo.

2015). Further, Appellant’s approach to interpreting the Act is not compatible with this Court’s mandate that “a court should give effect to the most likely, most reasonable, interpretation of the statute, given its design and purpose.” *Bain v. City of Cheyenne*, 2025 WY 67, ¶ 12, 570 P.3d 725, 729 (Wyo. 2025) (citation and internal quotation marks omitted).

Finally, Appellant maintains this Court should interpret the relevant statutory provisions to allow amendment of a birth certificate to reflect gender identification rather than biological sex at birth to avoid a constitutional challenge. (Appellant’s Br. at 19-20). It is true courts “will not interpret a statute ‘to create an unconstitutional result if it can be avoided.’” *Bain*, ¶ 18, 570 P.3d at 730 (quoting *Cir. Ct. of Eighth Judicial Dist. v. Lee Newspapers*, 2014 WY 101 ¶ 27, 332 P.3d 523, 532 (Wyo. 2014)). However, that does not mean the Court should interpret a statute in a particular way just to avoid a party’s argument about *potential* unconstitutionality (not actual unconstitutionality). (See Appellant’s Br. at 19-20). As will be demonstrated *infra*, the What Is a Woman Act, when interpreted in accordance with its plain meaning, does not violate constitutional protections.

**2. The Legislative purpose of the What Is a Woman Act as determined by statements made by two legislators during a debate.**

Appellant also twists the legislative purpose of the Act by quoting two legislators to show their subjective intent for the law. (*Id.* at 19). This is an attempt to support the erroneous conclusion that the Act was never intended to prevent transgender individuals from changing their birth certificates. (*Id.*). Although legislative history can be used to help interpret a statute in limited circumstances, such as when the language is ambiguous or to

confirm the Court’s interpretation of the plain language of the statute, Appellant’s legislative history argument in this case is entirely unavailing. *See Phoenix Vintners*, ¶ 15 n.1, 423 P.3d at 314 n.1 (discussing employing legislative history as an extrinsic aid of construction when the statutory language is ambiguous); *Skoric v. Park Cnty. Cir. Ct., Fifth Jud. Dist.*, 2023 WY 59A, ¶ 13, 532 P.3d 667, 671 (Wyo. 2023) (“[t]hough it is rarely available, [this Court] can look to legislative history to confirm the legislative intent reflected in the statute’s plain language.”) (cleaned up).

The “legislative history” Appellant relies upon is a discussion by individual legislators about a proposed amendment to the What Is a Woman Act that did not pass. Rep. Jarvis Amendment HB0032H2001 to H.B. 32, 68th Leg., 2025 Gen. Sess. (Wyo. 2025), <https://www.wyoleg.gov/Legislation/2025/HB0032>; Wyoming House Floor Session-Day 4, January 17, 2025-AM, at 40:34 to 41:39 (YouTube), [https://www.youtube.com/watch?v=cT\\_iAshxEcw](https://www.youtube.com/watch?v=cT_iAshxEcw). In general, “the subjective intent of a particular legislator is not appropriate” evidence of legislative intent. *Mountain Cement Co. v. S. of Laramie Water & Sewer Dist.*, 2011 WY 81, ¶ 55 n.12, 255 P.3d 881, 902 n.12 (Wyo. 2011). In addition, the legislators’ discussion on an amendment that did not pass cannot reflect anything about the entire legislature’s intent with regard to the final enacted legislation. *Barlow Ranch, Ltd. P’ship v. Greencore Pipeline Co. LLC*, 2013 WY 34, ¶ 45, 301 P.3d 75, 90 (Wyo. 2013) (“While the intent of individual legislators cannot be considered as reflecting the intent of the legislature as a whole, the fact that the matter was debated and the final legislation included the relevant language does provide evidence of the legislative intent.”).

Finally, the discussion itself contained inaccurate information, including about the Court's holding in *MH v. First Judicial District Court of Laramie County*. As such, Appellant's reliance on this supposed "legislative history" is entirely wrong.

**3. The caselaw on Kansas's Women's Bill of Rights Act is distinguishable.**

Appellant maintains a Kansas court of appeals decision supports Appellant's interpretation of the What Is a Woman Act as allowing birth certificate amendments to reflect gender identity. (*Id.* at 17-18). *State ex rel. Kobach v. Harper*, 571 P.3d 6 (Kan. Ct. App. 2025), involved a dispute between the Kansas Department of Revenue and the state Attorney General over the proper interpretation of the Kansas Women's Bill of Rights Act, K.S.A. 2024 Supp. 77-207(c). That Act included language similar, but not identical, to § 8-1-110(d). Specifically, the Kansas statute stated:

Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purposes of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic 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(c).

After passage of the Women's Bill of Rights Act, the department of revenue continued to issue driver licenses reflecting transgender persons' gender identities. *Harper*, 571 P.3d at 11-12. The attorney general sought a writ of mandamus and injunction against the department of revenue on the grounds the Women's Bill of Rights Act required driver licenses to reflect the person's sex at birth. *Id.* at 14. The court refused to issue the injunction. *Id.* As relevant here, the court decided the attorney general was unlikely to

prevail on the merits because subsection (c) did not prohibit the department of revenue from issuing licenses reflecting the person’s gender identity rather than biological sex. *Id.* at 24. It noted that the department retained records of the original sex designation, which it believed satisfied the statutory requirements. *Id.* The court held that “[t]o read the statute as the [attorney general] suggests is incorrectly reading the final sentence of K.S.A. 2024 Supp. 77-207(c) as ‘data shall *only* identify each individual who is part of the collected data set as either male or female at birth,’” which would inappropriately add language to the statute. *Id.* at 24.

*Harper* is distinguishable from the case at bar in several ways. While the Kansas act is similar to Wyoming’s, it contains significant differences in language, for example, different definitions of male and female. Kan. Stat. Ann. § 77-207 (West); Wyo. Stat. Ann. § 8-1-110(a). More significantly, Kansas’s provision addressing sex identifiers in vital statistics is substantially different from subsection (d) in the Wyoming Act. In particular, subsection (d) states in relevant part: “Any state . . . department . . . that collects vital statistics . . . 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 person’s sex** at birth.” (emphasis added). The highlighted language is not part of the Kansas statute at issue in *Harper*. Subsection (d) is clearer than the Kansas statute about directing state departments that all collected data that identifies a person by sex must be consistent with the person’s sex at birth.

The *Harper* court also had to reconcile multiple, different definitions of sex and gender across Kansas’s statutes because the Kansas Attorney General argued that gender and sex had the same meaning. *Harper*, 571 P.3d at 24-33. That is not at all an issue in this case. Our Act and the vital record statutes are the only statutes at issue and none of them use the term gender. *See* Wyo. Stat. Ann. §§ 8-1-110(d), 35-1-401 through -431.

Finally, it is clear the *Harper* court did not interpret the Women’s Bill of Rights Act as the legislature intended because less than a year after the decision, the Kansas legislature amended the act to add “only” to the statute. This reinforced the legislature’s intent that the statute should be interpreted as the attorney general had advocated, i.e., the agencies “shall **only** identify each individual who is part of the collected data set as either male or female at birth.” 2026 Kan. Sess. Laws, ch. 3, § 6, eff. Feb. 26, 2026. Thus, the *Harper* opinion is inapposite.

**E. Read in *pari materia*, the What Is a Woman Act, rather than the Correction and Amendment of Vital Records statute and the Department’s corresponding rule, controls amendment of a person’s sex on birth certificates.**

Wyoming Statute § 35-1-424 and the Department’s rule allows a birth certificate to be corrected by court order “[w]hen the sex of an individual has been changed[.]” *Rules, Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10, § 4(e)(iii) (2008). This conflicts with § 8-1-110(a), which, notwithstanding any other provision of law, requires any “application of person’s biological sex under any law or rule and regulation” to reflect the person’s sex at birth. Section 35-1-424 and its corresponding rule are also inconsistent with subsection

(d) of the Act, which directs agencies to identify persons according to their sex at birth when the Department collects vital statistics. Wyo. Stat. Ann. § 8-1-110(d).

The Correction and Amendment of Vital Records statute has a different scope than the Act. In conjunction with the implementing regulations, the Correction and Amendment of Vital Records statute generally governs the maintenance of vital records following a court order. *Id.* § 35-1-424(a). Stating the difference plainly, the Act pertains to designations of biological sex in all laws, rules and regulations, data collection, and sex classifications for vital statistics purposes, whereas the Correction and Amendment of Vital Records statute addresses record maintenance.

When read *in pari materia*, the Correction and Amendment of Vital Records statute is limited by the Act's rule of construction and by the definitions in subsection (a) of the Act. The vital records statute is also limited by prescription through subsection (d) of the Act, which provides [...] any state agency, department 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 [...] as either male or female consistent with the person's sex at birth. *Id.* § 8-1-110(d).

Before enactment of the Act, a court could, but was not mandated to, order the Department to change a sex identifier on a birth certificate. *Rules, Wyo. Dep't of Health, Vital Records Servs.*, Ch. 10, § 4(e) (2008). After enactment of the Act, which applies to all laws, rules and regulations, the Department is no longer authorized to change a birth certificate to reflect a sex other than the person's sex at birth. *Id.* §§ 35-1-424(a), 8-1-110(d).

When two statutes conflict irreconcilably, the more specific provision controls over the more general if they involve the same subject. *Rock v. Lankford*, 2013 WY 61, ¶ 37, 301 P.3d 1075, 1085 (Wyo. 2013) (citing *Groenberg v. Teton Cnty. Hous. Auth.*, 2011 WY 13, ¶ 45, 247 P.3d 35, 45 (Wyo. 2011)). Additionally, “the prior law is considered amended by implication only to the extent of the conflict.” *Johnson v. Safeway Stores, Inc.*, 568 P.2d 908, 913 (Wyo. 1977). As the more recently enacted and specific law, the Act controls over the Correction and Amendment of Vital Records statute, which is now considered amended by implication to the extent of the conflict presented here. *Id.*

Appellant reasons that since the Act is in Title 8, not Title 35, the legislature did not intend the Act would apply to vital records statutes in Title 35. (*Id.*). This is obviously incorrect. It does not matter which title in Wyoming statute the Act is located, the Act plainly states it applies to **all** Wyoming laws, rules, and regulations having to do with a person’s biological sex. Wyo. Stat. Ann. § 8-1-110(a). This also includes the Department’s rules for amending a vital record. *Id.*

Appellant contends repeatedly that keeping the original birth certificate on record at the Department satisfies the Act’s requirement that the agency collecting vital statistics identify persons according to sex at birth. (Appellant’s Br. 2-3, 10, 14-18, 36-39, 44, 52). However, it does not matter if the Department keeps the original birth certificate as required by the Department’s rules, nor does it matter if the original certificate remains unchanged. *See Rules, Wyo. Dep’t of Health, Vital Records Servs.*, Ch. 10 § 3(c) (2026) (“[i]f 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 plain language of

§ 8-1-110(d), requires the Department to identify a person in collected vital statistics consistent with the person's sex at birth. Under subsection (a), a person's sex means biological sex at birth. This applies notwithstanding any other provision of law. Wyo. Stat. Ann. § 8-1-110(a).

Appellant also tries to limit the purpose and scope of the Act. (Appellant's Br. at 17). Appellant relies on a myopic focus on data collection, but the Act actually goes far beyond data collection. Wyo. Stat. Ann. § 8-1-110(a). The Act establishes rules of interpretation that apply to all statutes, rules, and regulations pertaining to a person's biological sex. *Id.* The Act also addresses topics besides collecting vital statistics, including the appropriate level of constitutional scrutiny for challenges to laws and regulations that distinguish between the sexes. *Id.* § 8-1-110(b).

The legislature has the authority to limit amendments made by the Department and did so by enacting § 8-1-110. Although the Act does not reference the Correction and Amendment of Vital Records statute or Department rules, its plain language prohibits the Department from changing a birth certificate's sex identifier by requiring the Department to record sex based strictly on the person's sex at birth. This Court cannot "rewrite a statute, supply omissions, or make other changes ... [and] is not at liberty to add words to a statute that the legislature chose to omit." *Herrick v. Jackson Hole Airport Bd.*, 2019 WY 118, ¶¶ 28-29, 452 P.3d 1276, 1283-84 (Wyo. 2019) (internal citations omitted).

The Act prohibits amendment of the sex designation on birth certificates. It restricts the Department from identifying a person's sex on a birth certificate as anything other than "male or female consistent with the person's sex at birth." Wyo. Stat. Ann. § 8-1-110(d).

Accordingly, the process of changing sex on a birth certificate under The Correction and Amendment of Vital Records statute and the Department rule is no longer available.

## **II. The Act does not violate Appellant's right to equal protection under the Wyoming Constitution.**

Appellant argues the Act violates the Wyoming Constitution's guarantees of equal protection, as it does not allow transgender persons to obtain an amended birth certificate reflecting their gender identity. (Appellant's Br. at 20-46). Appellant's position appears to be that the Act creates legislative classifications consisting of transgender persons and cisgender persons and treats the classes differently. (*Id.* at 30-31). Appellant asserts intermediate scrutiny applies because the Act creates classifications based on sex and a person's status as transgender. (*Id.* at 23-33).

However, Appellant does not analyze the Act under intermediate scrutiny which requires the government to show the law substantially furthers an important government objective. Instead, Appellant applies a version of the rational relationship test this Court first established in *Johnson v. State Hearing Exam'rs Off.*, 838 P.2d 158 (Wyo. 1992) (hereinafter *Johnson* 1992). That test, which this Court no longer uses, required (1) identifying the harmed group, (2) defining the law's purpose, (3) justifying the disparate treatment, and (4) testing for relevance. *Newport Int'l Univ., Inc. v. State, Dept. of Educ.*, 2008 WY 72, ¶ 18, 186 P.3d 382, 387 (Wyo. 2008) (citing *Lincoln Cnty. Sch. Dist. No. 1 v. State*, 985 P.2d 964, 967 (Wyo. 1999)).

Appellant's claim fails this Court's equal protection analysis under the Wyoming Constitution. On its face, the Act does not create legislative classifications of transgender

persons and cisgender persons, nor does it create those classifications under any other method. *See* Wyo. Stat. Ann. § 8-1-110 *et seq.* If it does create a legislative classification, Appellant fails to show the Act treats similarly situated persons unequally. Even if Appellant’s claim clears these threshold issues, Appellant has not shown the Act creates classifications based on sex or transgender status that are entitled to intermediate scrutiny. Instead, the Act affects ordinary interests, meaning, the typical rational relationship test used by this Court in recent years, and in federal courts, applies.

The test first established in *Johnson* 1992, and advanced by Appellant, has not been used since 2008. This Court should apply the conventional federal rational relationship test used for over two decades in applying the Wyoming Constitution’s equal protection clauses. *Greenwalt v. Ram Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 40, 71 P.3d 717, 731 (Wyo. 2003); *Hicks v. State*, 2025 WY 113, ¶¶ 138, 142, 578 P.3d 366, 400-01 (Wyo. 2025). Under that test, the Act’s classification is rationally related to the legitimate state interest of maintaining accurate historical records.

#### **A. Standard of Review**

“[W]hether a statute is constitutional is a question of law over which this Court exercises *de novo* review.” *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022) (emphasis in original) (citations omitted). When a statute is challenged on equal protection grounds, the presumptions and burdens to show a statute is unconstitutional depend on “whether the interest at stake involves a fundamental right or a suspect class.” *Id.* (citation omitted).

**B. The Act does not violate equal protection because it does not create a legislative classification and applies equally to similarly situated persons.**

Appellant does not directly address the initial two steps in an equal protection analysis under the Wyoming Constitution. (*See* Appellant’s Br. at 20-46 (mentioning intermediate scrutiny applies and then applying the rational relationship test from *Johnson* 1992)). Regardless of the level of constitutional scrutiny, Appellant bears the threshold burden of showing the Act creates a legislative classification and, such classification treats similarly situated persons unequally. *Hicks*, ¶¶ 138, 142, 578 P.3d at 400-01. Appellant includes some discussion of the case law concerning these threshold questions and generally asserts the Act creates sex-based and transgender status-based classifications. (Appellant’s Br. at 24, 30-31 (identifying an intermediate scrutiny analysis)). Appellant fails to show the Act creates a legislative classification and results in unequal treatment of similarly situated persons.

**1. The Act does not create a legislative classification.**

Establishing an equal protection violation requires Appellant to “identify a legislative classification in [the Act] and show that classification treats similarly situated persons unequally.” *Hicks*, ¶ 138, 578 P.3d at 400 (citing *Greenwalt* ¶ 40, 71 P.3d at 731). If Appellant fails to do so, “there is no equal protection violation, and the claim must be dismissed.” *Id.* (citing *Bird v. Wyo. Bd. of Parole*, 2016 WY 100, ¶ 7, 382 P.3d 56, 61 (Wyo. 2016)).

This Court recognizes three ways a person challenging a law on equal protection grounds can use to “demonstrate a statute creates a suspect legislative classification[.]”

*Hicks*, ¶ 141, 578 P.3d at 400-01 (citing *State v. Laude*, 654 P.2d 1223, 1226 (Wyo. 1982)). First, the challenger can show the law creates “a classification on its face requiring no proof of the classification other than the language of the statute itself.” *Laude*, 654 P.2d at 1226. If no facial classification exists, a challenger may show the law is “impermissibly applied in varying degrees to different identifiable classes of individuals.” *Id.* This method requires proof beyond the express language of the law to establish a legislative classification that impermissibly targets a certain group of people. *Id.* If a law does not create a classification on its face and is not “applied unevenly[,] [a classification] may nonetheless be shown by outside proof to constitute ‘a device designed to impose different burdens on different classes of persons.’” *Id.* (quoting Nowak, Rotunda, and Young, *Constitutional Law*, ch. 16 at 527 (1978)). If a law does not facially create a classification, Appellant carries the burden to show how the Act impermissibly targets the proposed classification. *Hicks*, ¶ 141, 578 P.3d at 401. Appellant fails to meet this burden.

Appellant does not directly address which legislative classification the Act creates. (Appellant’s Br. at 20-46). Appellant argues intermediate scrutiny should apply because the Act applies unequally based on sex and transgender status. (*Id.* at 20, 30-46). Appellant notes the “existence of discrimination” is established by referencing the face of a law or where a law’s operation renders it a “device designed to impose different burdens on different classes of people.” (*Id.*) (quoting *Hicks*, ¶ 141, 578 P.3d at 401)). As to this Court’s holding in *Hicks*, Appellant states that “[r]egardless of how it is analyzed, transgender people are the target of the Act.” (*Id.*). Appellant admits the Act applies equally to people who are not transgender. (*Id.*). Appellant posits, transgender persons under the

Act “face a categorical barrier to accessing certificates consistent with their gender identity.” (*Id.* at 30-31). The point is conclusory, that “[a]s with the [Act’s] discrimination based on sex, its discrimination against transgender people is also facially apparent by the operation of its terms.” (*Id.* at 31). The Act does not create a legislative classification on its face, and Appellant has not met the burden of showing the Act impermissibly targets Appellant’s proposed classifications. *Hicks*, ¶ 141, 578 P.3d at 401.

Starting with Appellant’s claim that the Act creates a legislative classification on its face, the Act’s operative provision states any agency;

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 person’s sex at birth.

Wyo. Stat. Ann. § 8-1-110(d) (emphasis added).

The Act creates only one legislative classification for recording vital statistics: “each person who is part of the collected [vital statistics] data set.” *Id.* The Act parses this single legislative classification as persons identified as “male or female consistent with the person’s sex at birth.” *Id.* It further defines male and female in relation to certain biological identifiers, but the definitions only explain what the Act means by “sex at birth.” *See id.* § 110(a)(ii)-(iii). The definitions and subsection (d) challenged by Appellant do not create a classification based on sex because the operative language equally applies to “**each person** who is part of the collected [vital statistics] data set.” *Id.* § 110(d) (emphasis added). Like the law in *Hicks*, Appellant’s proposed classifications of sex and transgender status are not classifications created on the face of the Act. *Hicks*, ¶ 139, 578 P.3d at 400.

Hicks argued the first-degree murder statute established a classification that impermissibly targeted “emerging adult[s]” (those over eighteen) because a punishment exception applied to those under age eighteen. *Id.*, ¶ 139, 578 P.3d at 400. This Court rejected that claim, holding the statute created two legislative classifications: “those over age eighteen and those under age eighteen,” but that did not mean it impermissibly targeted those over eighteen. *Id.*, ¶ 139, 578 P.3d at 400.

The Act only creates one legislative classification: each person part of the collected data set. Wyo. Stat. Ann. § 8-1-110(d). The Act does not distinguish between people based on sex or transgender status; both transgender and cisgender persons are included in this single express classification. (*See* Appellant’s Br. at 31); Wyo. Stat. Ann. § 8-1-110(d). The Act’s definitions of sex, based on biological markers at birth, merely operate on this class, ensuring every person is subject to the same legal standard regardless of gender identity formed later. *See id.* § 110(a)(ii)-(iii). Because the Act creates a single legislative classification on its face and the classification is treated equally by the operative language of the statute, Appellant’s equal protection claim fails. *Hicks*, ¶ 138, 578 P.3d at 400.

However, Appellant also argues the Act treats transgender individuals differently from cisgender people whose birth certificates reflect their gender identity. (*Id.*). Appellant claims the Act creates a separate classification for transgender individuals by prohibiting them from obtaining birth certificates that align with their gender identity. (Appellant’s Br. at 30-31). According to Appellant, this “bears indicia of a suspect or quasi-suspect classification.” (*Id.*) Appellant bears the burden of showing the law is “impermissibly

applied in varying degrees to different identifiable classes of individuals.” *Laude*, 654 P.2d at 1226; *Hicks*, ¶ 141, 578 P.3d at 401.

Appellant’s attempt to show a legislative classification created by the Act fails for similar reasons that Appellant’s facial challenge fails. The classifications the Act creates for purposes of vital records are “person[s] who [are] part of the collected [vital statistics] data set.” Wyo. Stat. Ann. § 8-1-110(d). Transgender and cisgender persons are included in this classification. Both transgender persons and cisgender persons are treated the same under the Act, not different. *Id.* The birth certificates of both reflect the person’s sex at birth. *Id.* Because the Act is not a “device designed to impose different burdens on different classes of persons,” Appellant’s equal protection claim fails. *Laude*, 654 P.2d at 1226; *Hicks*, ¶ 141, 578 P.3d at 401.

## **2. The Act does not treat similarly situated persons unequally.**

If this Court determines the Act creates a legislative classification of transgender persons, the second threshold question is if the Act “treats similarly situated persons unequally[.]” *Hicks*, ¶ 142, 578 P.3d at 401 (quoting *Hageman v. Goshen Cnty. Sch. Dist. No. 1*, 2011 WY 91, ¶ 54, 256 P.3d 487, 503 (Wyo. 2011)). Appellant also bears this burden. *See Hageman*, ¶ 54, 256 P.3d at 503.

In order to be similarly situated, persons must be “subject to the same circumstances and same conditions.” *Hicks*, ¶ 142, 578 P.3d at 401 (quoting *Merchant v. State Dep’t of Corr.*, 2007 WY 159, ¶ 18, 168 P.3d 856, 863 (Wyo. 2007)). Appellant claims the Act treats Appellant unequally based on sex and classification as a transgender person. (Appellant’s Br. at 30-31). Assuming transgender and cisgender persons are similarly

situated due to the Act’s single facial classification, Appellant still cannot demonstrate unequal treatment based on sex and transgender status. *Hicks*, ¶ 142, 578 P.3d at 401; Wyo. Stat. Ann § 8-1-110(d); (Appellant’s Br. at 24, 30-31).

**a. The Act does not treat Appellant unequally based on sex.**

As the district court ruled, the Act does not result in unequal treatment of similarly situated groups based on sex. (R. at 127). The court ruled the Act merely “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.’” (*Id.*). The district court noted that Appellant conflated “‘sex,’ described in biological terms, with ‘gender,’ which is a social construct.” (*Id.* at 128-29). A review of the cases relied upon by the district court supports the conclusion the Act does not treat the sexes or transgender or cisgender persons differently.

First, in *Gore v. Lee*, the Sixth Circuit Court of Appeals addressed a challenge brought by four transgender persons against a Tennessee law that permitted amending the sex recorded on a birth certificate only to correct a factual error, specifically excluding “sex change surgery.” *Gore v. Lee*, 107 F.4th 548, 555 (6th Cir. 2024). The court rejected the plaintiffs’ equal protection claim, holding the law “treats the sexes identically” because its only distinction was between applicants who could or could not produce evidence of a factual error. *Id.* The *Gore* court also addressed the argument that sex in the context of equal protection case law includes gender. *Id.* at 556-58.

Similar to the claim raised here by Appellant, the plaintiffs in *Gore*, who were born male but identified as female, argued that if they had “been assigned female at birth, they would be able to have certificates matching their identity[.]” *Id.* at 554, 556. They argued

the disparity “necessarily amounts to a form of sex discrimination.” *Id.* The district court rejected this argument.

The *Gore* court distinguished cases that discussed gender identity as a subset of “sex” in employment discrimination under Title VII, not equal protection. *Id.* (citing *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023), *aff’d sub nom. United States v. Skrmetti*, 605 U.S. 495 (2025)). The court concluded plaintiffs had not shown unequal treatment on the basis of sex because the constitution does not require the government to use “sex” to refer to gender identity on state documents. *Gore*, 107 F.4th at 557.

The district court in this case also addressed Appellant’s reliance on *Bostock v. Georgia*, 590 U.S. 644 (2020), for the proposition that the Act treated Appellant unequally based on sex. (R. at 128). In *Bostock*, the court held Title VII’s prohibition on employer discrimination based on sex includes employees who are discriminated against because they are homosexual or transgender. *Bostock*, 590 U.S. at 665. The *Bostock* court reasoned Title VII’s prohibition on “employers from taking certain actions ‘because of’ sex” inserted a “but-for” causation element into the test for sex discrimination. *Id.* at 656. Applying the “but-for” causation element, it held that “if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.” *Id.* at 659-60. In the context of a transgender employee, the Court provided a hypothetical application of its reasoning:

[T]ake an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again,

the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

*Id.* at 660.

The district court relied on *United States v. Skrametti*, 605 U.S. 495, 520 (2025), to distinguish *Bostock*. *Skrametti* addressed whether the gender identity (of a transgender person) is included in the definition of "sex" in an equal protection analysis. (R. at 128). The Supreme Court assessed whether a Tennessee law prohibiting minors from receiving gender-affirming care violated equal protection. *Skrametti*, 605 U.S. at 506-08. The court held the law classified persons based on age and medical use, not sex, and declined to extend the *Bostock* Title VII analysis. *Id.* at 511, 520. However, the *Skrametti* court applied *Bostock*'s "but-for" causation test, concluding that changing a minor's sex or transgender status would not alter the law's application. *Id.* at 520-21. Following that rationale, the district court in this case ruled Appellant's "transgender status [was] not the 'but-for' reason" for the state's refusal to change the sex designation on Appellant's birth certificate.

The district court was correct. Appellant's transgender status is not the "but-for" reason for the Department's refusal to change the sex on Appellant's birth certificate. Applying the What Is a Woman Act, the Department refuses to change the sex designation on anyone's birth certificate to reflect a sex other than the person's biological sex at birth.

The reasoning in *Bostock*, *Gore*, and *Skrametti* shows the Act does not violate Appellant's equal protection rights. The Act does not treat transgender persons differently based on sex. *Gore*, 107 F.4th at 555-57; Wyo. Stat. Ann. § 8-1-110(d). Like the law that prohibited all persons from amending birth certificates absent error in *Gore*, the Act treats

all “person[s] who [are] part of the collected [vital statistics] data set” equally with regard to sex because it requires all persons to be identified in their vital records according to their sex at birth. *Id.* Further, Appellant’s claim is brought under the Wyoming Constitution’s equal protection clause, not as a Title VII action. (Appellant’s Br. at 20-46). The discussion of gender as a subset of sex is limited to the Title VII context. *Gore*, 107 F.4th at 556. Accordingly, Appellant cannot show unequal treatment under the Act based solely on sex.

Appellant, nevertheless, claims *Bostock* shows unequal treatment of transgender persons is sex-based discrimination. (Appellant’s Br. at 26, 31). The holding in *Skrmetti* demonstrates how Appellant’s reliance on *Bostock* is misplaced. Appellant quotes the holding in *Bostock*, “it is impossible to discriminate against a person for being ... transgender without discriminating against an individual based on sex.” (*Id.* at 31 (quoting *Bostock*, 590 U.S. at 660)). However, the holding in *Bostock* was based on the Court’s interpretation of Title VII. *Bostock*, 590 U.S. at 665; accord *Gore*, 107 F.4th at 556. As noted in *Skrmetti*, the inclusion of transgender persons in the definition of sex in *Bostock* only related to Title VII. *Skrmetti*, 605 U.S. at 520. The Court declined to extend the definition of sex discrimination in *Bostock* to equal protection. *Id.* The *Gore* court recognized *Skrmetti*’s limit on *Bostock*’s holding. *Gore*, 107 F.4th at 556. Because the United States Supreme Court has declined to extend *Bostock*’s definition of sex to equal protection, this Court should do the same and hold the Act does not treat transgender persons unequally based on sex. *Skrmetti*, 605 U.S. at 520; *Gore*, 107 F.4th at 556.

Appellant contends that despite the Supreme Court’s statements concerning *Bostock* in *Skrmetti*, other courts have held that laws that affect transgender persons should be

viewed as sex based. (See, e.g., Appellant’s Br. at 25 (citing *Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 810-11 (10th Cir. 2025); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 615 (4th Cir. 2020), as amended (Aug. 28, 2020); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018); *D.T. v. Christ*, 552 F. Supp. 3d 888, 895-96 (D. Ariz. 2021)). Appellant concludes these cases support the conclusion the Act treats transgender persons unequally based on sex. (*Id.*). Appellant’s reliance on these cases is misplaced.

This Court primarily views United States Supreme Court decisions as persuasive when interpreting the Wyoming Constitution, but also favorably cites federal circuit court decisions for state constitutional analysis. See generally *Johnson* 1992. Because of the lack of precedential value for issues of constitutional magnitude, this Court should not rely on federal district court decisions when assessing Appellant’s claim under the Wyoming Constitution. See *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, 371 P.2d 409, 416 (Wyo. 1962) (holding the challenge of a law under the Wyoming Constitution is “a question of which this court has complete jurisdiction and final authority”).

To the extent this Court chooses to rely on federal circuit courts as persuasive authority, Appellant’s reliance on Tenth Circuit precedent is unavailing. In *Griffith*, El Paso County Jail policies dictated where Griffith (a transgender woman) would be housed with limited ability to possess female underwear and lipstick. *Griffith*, 129 F.4th at 803-04. Griffith challenged the jail policies based on equal protection. *Id.* at 805. The court held the policies treated transgender persons unequally based on sex. *Id.* at 811. In reaching this conclusion the court relied extensively on the holdings in *Fowler v. Stitt*, 104 F.4th 770,

788 (10th Cir. 2024), *cert. granted, judgment vacated*, *Stitt v. Fowler*, 145 S. Ct. 2840 (2025), *Griffith*, 129 F.4th at 811.

In *Fowler*, the transgender plaintiffs challenged an Oklahoma statute and an executive order which plaintiffs alleged restricted their ability to amend the sex designation on their birth certificates. *Fowler*, 104 F.4th at 777-79. The plaintiffs raised claims under the U.S. Constitution. *Id.* at 780. In resolving the plaintiffs' equal protection claim, the court relied on the reasoning in *Bostock* to hold the laws discriminated on the basis of sex. *Id.* at 788-94. The court in *Griffith* agreed with *Fowler* and held the reasoning in *Bostock* applied to Griffith's claims. *Griffith*, 129 F.4th at 811.

Appellant's reliance on *Griffith* is undercut by its reliance on *Bostock* and the procedural history in *Fowler*. The Supreme Court granted a writ of certiorari in *Fowler* and issued a memorandum opinion vacating the judgment and remanding the case "for further consideration in light of *United States v. Skrmetti*." *Stitt*, 145 S. Ct. 2840. The Court's vacatur of *Fowler*'s holding—and by extension *Griffith*'s holding that extended the reasoning in *Bostock* to equal protection claims that allege unequal treatment of similarly situated transgender persons based on sex—place the persuasive value of both cases in question. Because the Supreme Court vacated *Fowler*, this Court should not rely on *Griffith* as persuasive authority when interpreting the Wyoming Constitution.

Appellant attempts to side step the Supreme Court's order vacating the decision in *Fowler* by arguing that the ruling "doesn't necessarily signal disagreement with the panel's reasoning." (Appellant's Br. at 39 n.13) (quoting *Vincent v. Bondi*, 127 F.4th 1263, 1264

n.1 (10th Cir. 2025)). However, the Court’s reversal of *Fowler* signals disagreement with the Tenth Circuit’s reasoning.

Admittedly, the laws at issue in *Skrmetti* and *Fowler* were aimed at different purposes, which shaped the analyses. However, the reasoning in *Skrmetti*, including its discussion of *Bostock*, applies with equal force to laws related to puberty blockers--as in *Skrmetti*--and the amendment of birth certificates discussed in *Fowler*. See *Skrmetti*, 605 U.S. at 511; *Fowler*, 104 F.4th at 788-94. Indeed, the Supreme Court obviously did not think the factual dissimilarity between these cases was dispositive given it remanded *Fowler* to consider *Skrmetti* related to the common nexus between the cases, that is, the application of *Bostock*. *Skrmetti*, 605 U.S. at 520-21; *Stitt*, 145 S.Ct. 2840. Therefore, the court’s order in *Fowler* does, in fact, indicate disagreement with the Tenth Circuit’s extension of *Bostock*’s reasoning to hold transgender status to be reviewed as sex-based in the equal protection context. Based on the outcome in *Fowler*, this Court should resist Appellant’s reliance on *Griffith* in assessing the claim under the Wyoming Constitution.

Appellant also cites the Fourth Circuit’s holding in *Grimm* as persuasive. (Appellant’s Br. at 25 (citing *Grimm*, 972 F.3d at 615)). The persuasive value of *Grimm* is diminished by subsequent Fourth Circuit precedent and United States Supreme Court decisions which call into question its reasoning. *Kadel v. Folwell*, 100 F.4th 122 (4th Cir. 2024), *cert. granted, judgment vacated sub nom. Crouch v. Anderson*, 145 S. Ct. 2835 (2025).

*Grimm*, a transgender male student, challenged a school board’s decision not to allow him in the school’s male bathroom. *Grimm*, 972 F.3d at 593. *Grimm* brought claims

under Title IX of the Education Amendments of 1972 and equal protection. *Id.* In addressing equal protection, the court held the decision should be viewed as sex-based discrimination. *Id.* at 608-10. It dismissed the board's arguments that its rule requiring students to use the restroom corresponding to their biological genders treated all students the same, regardless of sex. *Id.* at 608-09.

Four years after *Grimm*, the Fourth Circuit held West Virginia's Medicaid exclusion criteria, and contracts with providers stating gender-affirming surgeries were not covered procedures, amounted to sex-based discrimination under the equal protection clause. *Kadel*, 100 F.4th at 139-40, 153-54. In reaching this conclusion, the court relied on *Bostock* in part. *Id.* at 153 (citing *Bostock*, 590 U.S. 660-674). The Supreme Court issued a writ of certiorari in *Kadel*, vacated the Fourth Circuit's judgment, and remanded the case for consideration in light of the Court's holding in *Skrimetti*. *Crouch*, 145 S. Ct. 2835, *vacating judgment sub nom. Kadel*, 100 F.4th 122.

On remand, the Fourth Circuit applied *Skrimetti* and held Medicaid's exclusion did not discriminate based on sex or transgender status. *Anderson v. Crouch*, 169 F.4th 474, 486-90 (4th Cir. 2026). It also held that to the extent the exclusion resulted in unequal treatment, the proper scrutiny was rational basis. *Id.* at 486, 491-92. The plaintiffs failed to show the exclusion did not pass the lower level of scrutiny. *Id.* The Supreme Court's order and the holding in *Anderson* call into question *Grimm*'s conclusion that laws related to transgender persons implicate sex-based unequal treatment. *Grimm*, 972 F.3d at 609; *Crouch*, 145 S. Ct. at 2835, *vacating judgment sub nom. Kadel*, 100 F.4th 122; *Anderson*, 169 F.4th at 486-90. Accordingly, this Court should not rely on *Grimm* as persuasive in

determining whether the Act treats Appellant unequally on the basis of sex in interpreting Appellant's claim under the Wyoming Constitution.

The more persuasive federal precedent, *Gore* and *Skrmetti*, supports a finding the Act does not apply unequally to Appellant on the basis of sex. As such, Appellant has failed to show an equal protection violation. *See Gore*, 107 F.4th at 555-57.

**b. The Act does not treat Appellant unequally based on transgender status.**

Appellant also argues the Act results in unequal treatment due to transgender status. (Appellant's Br. at 30-33). Again, Appellant frames the issue in terms of whether intermediate scrutiny applies. (*Id.*). But the first step in Appellant's claim is to show whether the Act "treats similarly situated persons unequally[.]" *Hicks*, ¶ 142, 578 P.3d at 401. The Act does not treat persons unequally based on their transgender status.

The district court ruled that Appellant's transgender status was "not the 'but-for' reason for [Appellant's] inability for the State to change the sex on [Appellant's] birth certificate." (R. at 128). The court's conclusion was correct.

Like in *Skrmetti*, changing Appellant's status as a transgender person would not change the application of the Act. *Skrmetti*, 605 U.S. at 520-21. The Act applies the same to all "person[s] who [are] part of the collected [vital statistics] data set." Wyo. Stat. Ann. § 8-1-110(d). If Appellant were a cisgender person, Appellant would still be included in the classification of "each person who is part of the collected [vital statistics] data set." *Id.* Regardless of Appellant's status, the Act requires the birth certificate identify Appellant "as either male or female consistent with the [Appellant's] sex at birth." *Id.* Under the

reasoning in *Skrmetti*, Appellant's transgender status would not be the but-for cause of Appellant's inability under the Act to receive a birth certificate with a sex other than Appellant's sex at birth. *Skrmetti*, 605 U.S. at 520-21; Wyo. Stat. Ann. § 8-1-110(d).

Because Appellant has not shown that the Act results in unequal treatment based on sex or transgender status, Appellant's claim fails. *See Hicks*, ¶ 142, 578 P.3d at 401.

**C. The Act is subject to the rational relationship test used by this Court since *Johnson 1992*.**

Appellant argues that intermediate scrutiny applies. (Appellant's Br. at 23-33). Appellant asserts that the Act discriminates on the basis of sex and that transgender status provides a separate basis for intermediate scrutiny. (*Id.*). Despite making this argument, Appellant does not engage in a meaningful application of intermediate scrutiny. (*See id.* at 23, 33 n.12, 33-34). Appellant only applies this Court's version of rational relationship review expressed in *Johnson 1992*. (*Id.* at 33-46).

This Court should not conduct an analysis of intermediate scrutiny because Appellant has failed to provide any cogent argument related to the application of any higher scrutiny. Moreover, as demonstrated above, the Act (Wyo. Stat. Ann. 8-1-110(b)) does not discriminate on the basis of sex or transgender status so intermediate scrutiny is not appropriate.

**D. The equal protection test Appellant uses is no longer used by this Court.**

The district court did not analyze the Act under any level of constitutional scrutiny because it found no unequal treatment of different classes. The Department agrees with the district court and asserts no further equal protection analysis is necessary because the Act

does not discriminate on the bases of transgender status or sex. However, if this Court holds that Appellant has shown the Act results in unequal treatment, the proper level of constitutional scrutiny is the federal rational basis standard applied by this Court in recent years.

The only level of scrutiny Appellant addresses is the test laid out by this Court in *Johnson* 1992. (Appellant’s Br. at 33-46). This Court conducts equal protection analyses under the Wyoming Constitution similar to that under the U.S. Constitution. In *Johnson* 1992, this Court stated the equal protection provisions in the Wyoming Constitution “protect people against legal discrimination more robustly” than their federal counterpart. *Johnson* 1992, 838 P.2d at 165 (plurality opinion).

To implement this view, the plurality in *Johnson* 1992 adopted a new four-part test to assess if a statute violated the equal protection guarantees in the Wyoming Constitution. *Johnson* 1992, 838 P.2d at 165-66 (citing and quoting Note, *Justice Stevens’ Equal Protection Jurisprudence*, 100 Harv. L. Rev. 1146, 1146, 1155 & n.47 (1987)).<sup>2</sup> *Allhusen* described the *Johnson* 1992 four-part test as:

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<sup>2</sup> Although only two Justices joined the lead opinion in *Johnson* 1992, this Court adopted a new four-part equal protection test in a majority opinion just a few months after *Johnson* 1992 was decided. *Wilson v. State ex rel. Off. of Hearing Exam’r*, 841 P.2d 90, 95 (Wyo. 1992). This Court, however, has not applied the *Johnson* 1992 test in a majority opinion since 2008. See *Newport Int’l Univ., Inc.*, ¶¶ 15, 18, 186 P.3d at 387 (applying the four-part test, but doing so as part of “the conventional federal equal protection analysis”).

The four aspects of the test inquire as to (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 v. State of WY*, 898 P.2d 878, 885-86 (Wyo. 1995)

Over the past twenty years, however, this Court has receded from the view expressed in *Johnson* 1992 that the Wyoming constitution provides more robust equal protection than the federal constitution. The retreat began in 1999 in *Vasquez v. State* and was fully realized in 2003 in *Greenwalt*, 71 P.3d 717. In *Vasquez v. State*, this Court addressed the intent of the drafters regarding their decision to include a “declaration of rights” section in the Wyoming Constitution. *Vasquez v. State*, 990 P.2d 476, 484-85 (Wyo. 1999). To address individual rights, the framers of the Wyoming Constitution enumerated specific individual rights in article 1 under the header of “Declaration of Rights.” *See generally* Wyo. Const. art. 1. Article 1 in the original version of the Wyoming Constitution had thirty-seven sections. (1890 Wyo. Sess. Laws, Ch. 35-38). In these sections, the framers recognized individual rights and protected those rights from undue government interference. Robert B. Keiter & Tim Newcomb, *The Wyoming Constitution: A Reference Guide*, 45 (1993). In *Vasquez*, this Court stated:

[t]he most that can be definitely ascertained from the differences in the constitutional histories of the two documents may well be explained by the simple fact that it was the prevailing view that protection of individual rights was considered to be the province of the state and the federal rights acted only upon the federal government, and the Wyoming drafters acted accordingly.

*Vasquez*, 990 P.2d at 484.

Some scholars have opined that the framers intended for article 1 “to provide greater protection of citizens’ rights.” *Vasquez*, 990 P.2d at 484-85 (referencing Keiter & Newcomb, *The Wyoming Constitution: A Reference Guide*, 11-12). This Court, however, has not endorsed this view. *See Vasquez*, 990 P.2d at 485 (declining to adopt this view even though the Court acknowledged Mr. Keiter and Mr. Newcomb competently theorized about the framers’ intent). To the contrary, the *Vasquez* Court explained “[n]o state constitutional history exists which would lead us to believe that Wyoming initially included individual rights as a strong statement of societal values or because it intended to provide greater protection of individual rights.” *Id.* at 484.

Consistent with this statement in *Vasquez*, this Court subsequently held in *Greenwalt* that the equal protection provisions in the Wyoming Constitution do not afford greater protection than the federal Equal Protection Clause. *Greenwalt*, ¶ 39, 71 P.3d at 729 (stating that the federal and state equal protection provisions “have the same aim in view”) (citation omitted); *see also Martin v. Bd. of Cnty. Comm’r of Laramie Cnty.*, 2022 WY 21, ¶ 9 n.3, 503 P.3d 68, 80 n.3 (Wyo. 2022) (quoting *Greenwalt*); *Hardison*, ¶ 15, 507 P.3d at 42 (same).

Since *Greenwalt*, this Court has referenced the more robust protection view from *Johnson* 1992 in two cases. *See In re Neely*, ¶ 48, 390 P.3d at 744 (quoting *Johnson*); *Bird*, ¶ 6, 382 P.3d at 61 (quoting *Allhusen*, 898 P.2d at 884). Bu, neither *Neely* nor *Bird* applied the four-part test from *Johnson* 1992. Instead, since 2008, this Court has consistently used “the conventional federal equal protection analysis” instead of the four-part test from

*Johnson* 1992 in addressing state equal protection claims.<sup>3</sup> See *Bird*, ¶ 6, 382 P.3d at 61 (citation omitted); *Martin*, ¶ 14, 503 P.3d at 73; *Hardison*, ¶ 16, 507 P.3d at 44. This Court followed the *Greenwalt* “conventional” federal analysis as recently as 2025. *Hicks*, ¶¶ 137-45, 578 P.3d at 400-01. In *Hicks*, this Court’s only reference to *Johnson* 1992 was its dismissal of Hicks’s attempt to analogize the facts of his case to those in *Johnson* 1992. *Id.*, ¶ 140, 578 P.3d at 400.

**1. The Act is rationally related to a legitimate government objective.**

Appellant applies the test from *Johnson* 1992 in a rational relationship review argument. (Appellant’s Br. at 33-46). This Court should apply the conventional federal rational relationship test, as it has done for the last twenty years. *Greenwalt*, ¶ 39, 71 P.3d at 731-32; *Hicks*, ¶¶ 137-45, 578 P.3d at 400-01.

In a rational relationship challenge the “party attacking the rationality of the legislative classification has the heavy burden of demonstrating the unconstitutionality of a statute beyond a reasonable doubt.” *Greenwalt*, ¶ 39, 71 P.3d at 730 (citation omitted). The challenged law “comes to the reviewing court bearing a strong presumption of validity.” *Id.* (citation omitted). The rational basis test recognizes the roles of the legislature

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<sup>3</sup> In 2008, this Court acknowledged that it “uses the conventional federal equal protection analysis in the interpretation of the equality provisions of the Wyoming Constitution,” but then applied the *Johnson* 1992 test as though it were the “rational relationship test.” *Newport Int’l Univ.*, ¶¶ 15, 18, 186 P.3d at 387.

and courts. *Id.* (“Equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices and line-drawing.”).

Therefore, “[i]n areas of social policy, a statutory classification **must be upheld** if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Id.* (emphasis added). If the purpose of a law “can confidently be inferred from the provisions of the statute itself, recourse to internal legislative history and other ancillary materials is unnecessary.” *Id.* at 731 (citation omitted). “The legislature is presumed to have acted upon a knowledge of the facts and to have had in view the promotion of the general welfare of the people as a whole.” *Id.*

When determining whether a law is rationally related to a purpose “[a]ll reasonable doubts are to be resolved in favor of the validity of the statute.” *Id.* Despite the deferential nature of the test, it “is ‘not a toothless one.’ It allows the court to probe to determine if the constitutional requirement of some rationality in the nature of the class singled out has been met.” *Id.* (quoting *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981)).

The three elements of the rational relationship test are: “1. Identify the legislative classification at issue; 2. Identify the legislative objectives; 3. Determine whether the legislative classification is rationally related to the achievement of an appropriate legislative purpose.” *Greenwalt*, ¶ 40, 71 P.3d at 732. The legislative classification of the Act is “each person who is part of the [vital records] collected data set[.]” Wyo. Stat. Ann. § 8-1-110(d).

As discussed above, this classification does not create two categories of persons the Act treats differently. However, even if this Court accepts Appellant’s proposed legislative

classification of transgender persons and cisgender persons, the Act meets the remaining elements of the rational relationship test. (See Appellant’s Br. at 33).

The Act’s legislative objectives are explicit and provide a sufficient basis to satisfy the rational relationship test. *Greenwalt*, ¶ 39, 71 P.3d at 731. Subsection (d) of the Act directs state agencies collecting vital statistics to gather “accurate” data for public purposes, including compliance with anti-discrimination laws or for gathering accurate public health, crime, economic or other data. Wyo. Stat. Ann. § 8-1-110(d); *see also* Wyo. Stat. Ann. § 35-1-401(a)(i) (defining vital records as “records of birth, death, stillbirth, marriage, divorce and data relating thereto”).

The qualifying language shows the Act is meant to serve a number of public purposes, with the overarching goal of those purposes being the gathering of “**accurate** ... data[.]” Wyo. Stat. Ann. § 8-1-110(d) (emphasis added). The express language of the statute provides a sufficient legislative objective to satisfy the rational relationship test. *Greenwalt*, ¶ 40, 71 P.3d at 732; *cf. Gore*, 107 F.4th at 551-52 (discussing the importance of birth certificates). The Act serves the legislative objective by requiring records reflect a person’s sex at birth when sex designations are used.

The Act, on its face, also shows the legislative classification is rationally related to a legitimate legislative objective. *Greenwalt*, ¶ 40, 71 P.3d at 732. The Act sets the legislative classification as “each person who is part of the [vital records] collected data set[.]” Wyo. Stat. Ann. § 8-1-110(d). Classifying all persons whose vital records are collected as the subjects of the Act ensures the data collected is accurate as to all persons.

The Act's method for ensuring accuracy by requiring vital statistics reflect all persons' sex at birth also serves the goal of accurate data, as the biological facts at birth do not change.

To ensure the collection of accurate data, the Act mandates that when sex is used as an identifier, every person in the legislative classification must be identified "consistent with the person's sex at birth." Wyo. Stat. Ann. § 8-1-110(d). The records at issue in this case, birth certificates, are especially served by the express legislative objective of the Act to collect "accurate ... data[.]" *Id.* Although a person's gender identity may change during life, there is still a legislative goal of recording the facts of birth accurately, as those facts are useful for many purposes. *Id.*; *cf. Gore*, 107 F.4th at 551-52. The Act's way to ensure accurate data by requiring birth certificates reflect the biological facts of birth is rationally related to Appellant's classification of transgender and cisgender persons. To be clear, the Department does not accept there are separate classifications of people that are treated unequally by the Act. However, ensuring accurate data (by requiring biological facts of birth) is still a legitimate legislative objective.

Although Appellant provides a different analysis under *Johnson* 1992—muddying the waters concerning whether Appellant met the burden for the rational basis test—Appellant's application of the test touches on the rational relationship between the legislative objective and the classification created by the Act. (Appellant's Br. at 36-41). Appellant raises four arguments that the Act's classifications are not rationally related to its objective of accuracy. (*Id.*) First, birth certificates can be changed for other reasons, arguably changing the facts of birth. (*Id.* at 36-37). Second, the relief Appellant seeks is an amendment and the original certificate would be retained for historical accuracy. (*Id.* at 37-

38). Third, transgender persons were allowed to amend their birth certificates prior to the Act without any evidence that the process impaired accuracy. (*Id.* at 39-41). Fourth, the Act undermines the purpose of identity verification because transgender persons are denied certificates that match their outward appearance. (*Id.* at 41).

With regard to Appellant's first argument, the fact that other portions of the certificate including parentage can be amended based on a change in factual circumstances does not mean the Act's goal of accurately recording a person's sex at birth is not rationally related to the Act's classifications. The facts of parentage may be subject to dispute which may even require resolution by a court. *See* Wyo. Stat. Ann. §§ 14-2-401 through -408 (establishing the Wyoming Parentage Act). In contrast, the facts of a person's biological sex at birth are not subject to the same differing circumstances. The Act's goal of maintaining accurate records of a person's sex at birth, even when a person's gender identity changes, is served by the Act's classifications, and this argument does not overcome Appellant's heavy burden. *Greenwalt*, ¶ 39-40, 71 P.3d at 730-31.

Second, Appellant argues that the original record would still exist if an amended record were issued to Appellant, so the Act's requirement that a person's sex at birth be used on an amended birth certificate does not further the legislative goal. (Appellant's Br. at 37-38). Appellant is correct that the Vital Records rule requires the Division to maintain original certificates after a court-ordered amendment. (*Id.*); *Rules, Wyo. Dep't. of Health, Vital Records Servs.*, Ch. 10 § 3 (2026). Appellant argues the existence of other means to serve the Act's goals of accuracy of birth certificates undermines the rational relationship of the Act's classifications to the Act's goals. (*Id.* at 38 (citing *Allhusen*, 898 P.2d at

887; *Nehring v. Russell*, 582 P.2d 67, 80 (Wyo. 1978); *Hoem v. State*, 756 P.2d 780, 780 (Wyo. 1988)). However, the Act's goal of maintaining an accurate record of a person's sex at birth is not served by the ability of the Division to keep original records. The rule concerning amendments allows a birth certificate to be amended only after a court order. *Rules, Wyo. Dep't. of Health, Vital Records Servs* Ch. 10 § 3 (2026).

In contrast, a person's request to amend a certificate based on a change in a person's gender identity, which can remain fluid, is not subject to the same definite and final resolution by a court as to issues such as parentage. In addition, the existence of certificates that contain conflicting sex designations would create an ambiguity for other officials who rely on the certificate for the public purposes listed in the Act, which undermines the utility of the records. Taking these considerations together, the mere ability to maintain an original certificate does not independently address the Act's goal of providing accurate data as to a person's biological sex in all instances.

Third, Appellant cites to the prior process that would have allowed Appellant to amend the certificate to show the Act was, in effect, a solution in search of a problem. (Appellant's Br. at 39-40). The burden is on Appellant to overcome the strong presumption of the Act's constitutionality by showing unconstitutionality beyond a reasonable doubt. *Greenwalt*, ¶ 39, 71 P.3d at 730. The mere fact that a prior practice was allowed does not establish beyond a reasonable doubt that the legislature did not have knowledge of the prior practice and act in order to correct a deficiency in it. *Id.*, ¶ 39, 71 P.3d at 730-31 ("The legislature is presumed to have acted upon a knowledge of the facts and to have had in view the promotion of the general welfare of the people as a whole."). The Act

serves the purpose of curtailing the prior practice to ensure that a person's sex at birth is consistently accurate in all vital records. *See* Wyo. Stat. Ann. § 8-1-110(d). The Act rationally furthers the legislature's prerogative to promote the "the general welfare of the people as a whole." *Greenwalt*, ¶ 39, 71 P.3d at 730-31.

Finally, Appellant argues the Act's intention of accurately proving identity is not served because the Act denies transgender persons the ability to amend records to reflect their outward appearance. (Appellant's Br. at 41). This argument misconstrues the purpose of the Act. The Act's goal is not to affirm an individual's gender identity as expressed in their appearance. The Act's goal is to ensure vital records accurately reflect the biological sex of a person at birth in records that are collected and used for public purposes such as public health, criminal statistics, and economic data. *See* Wyo. Stat. Ann. § 8-1-110(d). The Act's provisions rationally serve this goal. *Id.*; *See also Greenwalt*, ¶ 40, 71 P.3d at 731-32. Therefore, Appellant has failed to show the Act's unconstitutionality beyond a reasonable doubt. *Id.*, ¶ 39, 71 P.3d at 730.

**III. The Wyoming Constitution does not confer or protect a right to privacy as Appellant alleges, and the Act does not violate any right to privacy.**

Appellant's final issue is that the Act violates a fundamental right to privacy under the Wyoming Constitution. (Appellant's Br. at 46-52). For the Act to violate such a right, Appellant must show the right exists either in the language of the Wyoming Constitution or as a natural right. Appellant shows neither, and Wyoming law establishes that no such right is recognized.

### **A. Standard of Review**

“The interpretation and application of the Wyoming Constitution is a question of law, reviewed *de novo*.” *Saunders v. Hornecker*, 2015 WY 34, ¶ 8, 344 P.3d 771, 774 (Wyo. 2015).

### **B. The Wyoming Constitution does not confer or protect a general right “to be let alone” by the State.**

Appellant argues that the Wyoming Constitution creates a fundamental right to privacy, otherwise known as the right to be let alone. (Appellant’s Br. at 46-52). Generally, Appellant has the burden to show both “a constitutionally protected interest and that it has been infringed in an impermissible way.” *Baessler v. Freier*, 2011 WY 125, ¶ 13, 258 P.3d 720, 725 (Wyo. 2011) (citation omitted). A close look at the “right to be let alone” principle reveals that this Court has not explicitly recognized it as a fundamental right conferred by or protected under the Wyoming Constitution.

This Court has recognized the “right to be let alone” as a common law privacy interest in the tort law context, but not as a constitutionally protected right. *See Town of Green River v. Bunger*, 58 P.2d 456, 460 (Wyo. 1936) (explaining that “[t]he home is a favorite of the law. It is there that the citizen can claim the right of privacy, the right to be let alone, on clear grounds” from disturbances to privacy caused by other individuals). The right to privacy is also implicit in some Wyoming statutes. *Howard v. Aspen Way Enters., Inc.*, 2017 WY 152, ¶ 24, 406 P.3d 1271, 1277-78 (Wyo. 2017) (collecting Wyoming statutes that protect privacy interests). Similarly, while *Howard* acknowledges implicit statutory privacy interests, none of the statutes cited confer protection for a

person's transgender status. (See Appellant's Br. at 46) *Howard*, ¶ 24, 406 P.3d at 1277-78.

As an Associate Justice on the U.S. Supreme Court, Louis Brandeis sought to constitutionalize the "right to be let alone" through the Fourth Amendment. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). Although the principle was first introduced in a dissenting opinion in a case that was subsequently overruled, the Supreme Court eventually adopted the "right to be let alone" principle as a part of its Fourth Amendment precedent. See, e.g., *United States v. Morton Salt Co.*, 338 U.S. 632, 651 (1950); *Winston v. Lee*, 470 U.S. 753, 758-59 (1985); *Katz v. United States*, 389 U.S. 347, 350 (1967). The Supreme Court has also recognized the "right to be let alone" in the First Amendment context. *Hill v. Colorado*, 530 U.S. 703, 716-18 (2000). Although Appellant cites article 1, sections 2, 4, 6, 7, and 36 (the unenumerated rights clause) of the Wyoming Constitution, Appellant does not analyze any language from the Wyoming Constitution to establish a right to privacy. Appellant only argues the right has been recognized in the federal constitution. The Wyoming analog of the federal constitution is not the same.

The Department recognizes this Court has "expressed willingness" to rely on article 1, section 4, of the Wyoming Constitution, which is nearly identical to the Fourth Amendment, "to protect the privacy rights" of Wyoming citizens. *Fertig v. State*, 2006 WY 148, ¶ 20, 146 P.3d 492, 498; *Ostrowski v. State*, 665 P.2d 471, 476 n.2 (Wyo. 1983). However, this Court does not need to consider if section 4 constitutionalizes the "right to be let alone" in this case because Appellant does not present any argument to support the assertion that a right to privacy exists in any specific constitutional section or that the Act

impeded a right to privacy under a specific section of the Wyoming Constitution. (Appellant’s Br. at 47); *Baessler*, ¶ 13, 258 P.3d at 725; *Woods v. State*, 2017 WY 111, ¶ 18, 401 P.3d 962, 969 (Wyo. 2017).

The Wyoming Constitution does not otherwise protect a “right to be let alone” or any other general right to privacy. The phrase “right to be let alone” does not appear in the constitutional text. The word “privacy” appears only once, in article 6, section 11, which provides in part that “[a]ll voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory.” Wyo. Const. art. 6, § 11. Given the specific nature of section 11, and given that the framers did not use the word “privacy” in any other provision in the Wyoming Constitution, this Court should conclude that the Wyoming Constitution does not explicitly confer a fundamental “right to be let alone” by government or any other general right to privacy.

In contrast, at least eleven states have some form of an explicit general right to privacy preserved in their state constitution. *See* Alaska Const. art. 1, § 22; Ariz. Const. art. 2, § 8; Cal. Const. art. 1, § 1; Fla. Const. art. 1, § 23; Haw. Const., art. 1, § 5; Ill. Const. art. 1, §§ 6, 12; La. Const. art. 1, § 5; Mont. Const. art. 2, § 10; N.H. Const., Bill of Rights art. 2-a; S.C. Const. art. 1, § 10; Wash. Const. art. 1, § 7.

This Court has quoted the phrase “right to be let alone” from *Olmstead* in two majority opinions. *See Emp. Sec. Comm’n of Wyo. v. W. Gas Processors*, 786 P.2d 866, 872 n.10 (Wyo. 1990); *Howard*, ¶ 23, 406 P.3d at 1277. The specific references to the “right to be let alone” in *Employment Security Commission* and in *Howard* were limited to the federal constitutional law context. *See Emp. Sec. Comm’n*, 786 P.2d at 872 n.10

(quoting the “right to be let alone” phrase from *Olmstead* in summarizing the federal constitutional guarantees to privacy); *Howard*, ¶ 23, 406 P.3d at 1277 (citing footnote 10 in *Employment Security Commission* and quoting *Katz* in explaining “that constitutional protections limit government rather than private intrusions” in the context of the Fourth Amendment). This Court did not recognize an explicit “right to be let alone” as a fundamental right protected by the Wyoming Constitution in either case. *Id.*, ¶ 24, 406 P.3d 1271.

In *Employment Security Commission*, this Court inferred that a general right to privacy in Wyoming can be found in article 1, section 36. *See Emp. Sec. Comm’n of Wyo.*, 786 P.2d at 872 n.11. However, it did not explain how or why a general right to privacy can be found in section 36—it simply cited to section 36 at the end of a string of citations in a footnote. *Id.* When it comes to interpreting the Wyoming Constitution, an “it-is-so-because-I-say-it-is-so” analytical technique does not suffice. *Black v. State*, 820 P.2d 969, 977 (Wyo. 1991) (Golden, J. dissenting). The dearth of legal analysis in *Employment Security Commission* renders the reference to a general right to privacy from section 36 legally worthless in addressing the “right to be let alone” question.

At least two state supreme courts have held that privacy is a natural right. *See Pavesich v. New England Life Ins. Co.*, 50 S.E. 68, 70 (Ga. 1905) (concluding that “[a] right of privacy in matters purely private is ... derived from natural law”); *Kunz v. Allen*, 172 P. 532, 533 (Kan. 1918) (same, quoting *Pavesich*); *see also Hodes & Nauser, MDs, P.A. v. Schmidt*, 440 P.3d 461, 486 (Kan. 2019) (declining to find a right to abortion grounded in the natural right to privacy). Appellant notes that fundamental rights can either

be implicit or explicit, but does not offer further explanation as to what constitutes a natural right under this Court's case law. (Appellant's Br. at 47). This Court has never recognized privacy as a natural right and has no reason to do so now.

Appellant has failed to offer a principled constitutional analysis of the Wyoming Constitution or a reasoned argument that the right to privacy or to be let alone is a fundamental natural right. Therefore, Appellant has not established a right existed for the Act to transgress. *Baessler*, ¶ 13, 258 P.3d at 725.

## CONCLUSION

The Department requests that this Court affirm the district court's order denying Appellant's request to change the sex designation on Appellant's birth certificate.

RESPECTFULLY SUBMITTED this 11th day of May 2026.

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## CERTIFICATE REGARDING ELECTRONIC FILING AND SERVICE

I certify on this 11th day of May 2026 the foregoing Brief of Appellee was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System on the following parties:

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The undersigned also certifies that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.

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