



March 17, 2023

The Honorable Secretary of State, Chuck Gray
Secretary of State's Office
Herschler Building East,
122 W. 25th Street, Suites 100
Cheyenne, Wyoming 82002

RE: HB0152/HEA No. 0088 Life is a Human Right Act

Dear Secretary Gray,

There are two bills this session which deal with the important topic of abortion: Senate Enrolled Act No. 93 (SEA0093) Prohibiting Chemical Abortions and House Enrolled Act No. 88 Life is a Human Right Act (HEA0088). I signed SEA0093 because it strengthened the protections for the unborn contained in 2022 House Enrolled Act No. 57 Abortion Prohibition-Supreme Court Decision ("HEA0057"), which is currently before the district court where it has been for nearly a year. I did so adding to my history of supporting and signing strong pro-life bills throughout my time as Governor, which notably includes last year's landmark legislation.

HEA0088 Life is a Human Right Act will become law without my signature as it seems to be the will of the legislature, and while it may offer some improvement to the bill I signed just last year, I believe now more than ever that if the Legislature seeks final resolution on this important issue, it ultimately may have to come through a Constitutional amendment.

As I noted, I have a strong record of protecting the lives of the unborn, *as well as their mothers*. I believe all life is sacred and that every individual, including the unborn, should be treated with dignity and compassion. I believe in family, and in the rights of parents. These beliefs are reflected in several pieces of legislation I have signed into law this session. These include House Enrolled Act No. 84 Medicaid Twelve-Month Postpartum Coverage; Senate Enrolled Act No. 69 Plan of Safe Care-Newborns; and Senate Enrolled Act No. 93 Prohibiting Chemical Abortions ("SEA0093"). Each of these laws is central to and consistent with a coherent pro-life legal framework in Wyoming.

Bearing this in mind, I want to note that the State has already been challenged in court on the constitutionality of its current abortion law, largely based on alleged conflicts with Article 1, Section 38 of the Wyoming Constitution and other constitutional provisions. Pending the resolution of these outstanding legal questions, the 9th Judicial District Court has temporarily enjoined enforcement of the law while Plaintiffs and the State make their cases. I understand the Legislature's effort to improve Wyoming's pro-life legal framework and preemptively clarify some of these legal questions with

HEA0088's various legislative findings. However, I am nonetheless concerned that, in practice, this bill would instead complicate and delay the resolution of these central and foundational constitutional questions posed by Article 1, Section 38 and other constitutional provisions. These questions need to be decided as soon as possible so that the issue of abortion in Wyoming can finally be resolved. It remains to be seen if HEA0088 provides a better legal framework for a favorable court determination, but that will be for the courts to decide. Depending on the court's answers, either the Legislature has exercised its constitutional authority over abortion or alternatively, the Legislature can proceed to settle the questions directly through presenting a constitutional amendment to the voters of Wyoming.

There is little question that with HEA0088 becoming law, a delay in answering the constitutional issues at the center of both HEA0057 and HEA0088 may occur. Moreover, inconsistencies between the exceptions and penalties listed in this law and those listed in SEA0093 may be problematic. I recognize that HEA0088 and SEA0093 were delivered by the same Legislature, so I must presume the Legislature understood that these inconsistencies could create confusion regarding restrictions on abortions. That said, a majority of the Legislature spoke on this matter and consequently I have acted without bias and after extensive prayer, to allow these bills to become law.

Finally, though I understand the intent of the legislative findings proposed in HEA0088, I am not convinced that so-called "findings" are a substitute for an expression of the people when it comes to constitutional matters. If the Legislature wants to expressly address how the Wyoming Constitution treats abortion and defines healthcare, then those issues should be vetted through the amendment process laid out in Article 20 of the Wyoming Constitution and voted on directly by the people. Article 1, Section 1 of the Wyoming Constitution underscores that "[a]ll power is inherent in the People." Attempting to clarify constitutional provisions indirectly, or the intent of a previous legislature, through codified legislative findings is a rare and largely untested approach in Wyoming law. Such a practice is likely to create more legal questions for the courts to unravel, while simultaneously dispossessing the people of their voice in such significant matters. The practice also begs a question about the separation of powers that is enshrined in Article 2 of the Wyoming Constitution. I further note that the concentration of power in one branch of government was an issue James Madison warned against in Federalist No. 51 at the birth of our nation.

Sincerely,



Mark Gordon
Governor

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cc: The Honorable Albert Sommers, Speaker of the House
The Honorable Ogden Driskill, President of the Senate
Chief Clerk, Wyoming House of Representatives
Chief Clerk, Wyoming Senate