

## SUMMARY ISSUED BY THE WYOMING SUPREME COURT

January 6, 2026

*State v. Johnson*, No. S-24-0326, 2026 WY 1

*This summary is intended to help the public understand the main points of the decision. It does not modify, supplement, or change the content of the Court’s opinion, or that of the specially concurring and dissenting opinions, and it should not be cited or relied on as legal precedent.*

### **Case Background**

In 2022, in *Dobbs v. Jackson Women’s Health Organization*, the United States Supreme Court overruled *Roe v. Wade*, leaving authority to regulate abortion to the individual states.

In 2023, the Wyoming Legislature passed a law called the Life is a Human Right Act, which prohibits people from performing abortions in Wyoming, with certain exceptions. The Legislature also passed a law making it illegal “to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person.” That law also contains certain exceptions.

Immediately after these laws took effect, a group of medical professionals, two non-profit corporations, and an individual woman (the Plaintiffs) sued the State and those responsible for enforcing the laws. The Plaintiffs asked the courts to rule that both laws violate the Wyoming Constitution.

After reviewing evidence and hearing both sides’ arguments, the trial court concluded the laws violate the Wyoming Constitution and told the State it cannot enforce them. The State appealed that decision to the Wyoming Supreme Court.

### **Issue Before the Court**

Because the Wyoming Supreme Court has the final say on what the Wyoming Constitution means, the Supreme Court did not rely on what the trial court decided. But like the trial court, the Supreme Court focused on a single issue:

**Do the Wyoming laws restricting abortions unjustifiably limit a woman’s state constitutional right to make her own health care decisions?**

In 2012, Wyoming voters passed an amendment to the Wyoming Constitution that gave Wyoming adults the right to make their own health care decisions. That amendment, found at Article 1, Section 38 of the Wyoming Constitution, was intended to respond to the Affordable Care Act (a federal law often called Obamacare) and specifically says that: “Each competent adult shall have the right to make his or her own health care decisions.”

### **The Court’s Decision**

In deciding what that language means in this case, all five Wyoming Supreme Court justices agreed that the decision whether to terminate or continue a pregnancy is a woman’s own health care decision protected by Article 1, Section 38. Relying on law from earlier Wyoming Supreme Court cases, all five justices also concluded that an adult’s right to make his or her own healthcare decisions is a fundamental right because of the very specific language used and because that language was put in a section of the Wyoming Constitution called the “Declaration of Rights.”

At this point, however, the justices took different paths in analyzing this case. Three justices concluded that the Court has an independent role in deciding what test applies to determine whether the 2023 laws violate the state constitution. Looking at prior cases and the language of Article 1, Section 38, the majority decided that a test called “strict scrutiny” applies in this case. Under that test, the State must prove the 2023 abortion laws were written as narrowly as possible to achieve the State’s interest in protecting prenatal life—that the abortion laws were the least burdensome way the State could achieve that goal without unjustifiably restricting a woman’s constitutional right to decide whether to terminate or continue a pregnancy. Only if the State met its burden of proof at the trial court level could the Supreme Court conclude the laws did not violate Article 1, Section 38.

The majority determined the State did not present enough evidence to show the restrictions (and exceptions) on performing abortions and the ban on medications (and exceptions) are no more restrictive than necessary to serve the State’s interest in protecting prenatal life. Therefore, the majority held that those laws are unconstitutional.

Justice Fenn agreed with this result but arrived there by relying on a different test using only the words from Article 1, Section 38. In his specially concurring opinion, Justice Fenn concluded that the State failed to prove the 2023 laws were “reasonable and necessary restrictions” on the right to make one’s own health care decisions.

Justice Gray also relied on the “reasonable and necessary” language found in Section 38. However, in her dissenting opinion, she would defer to the Legislature when deciding whether the abortion restrictions were “reasonable and necessary.”

When the opinions are read together, four justices (Boomgaarden, Fox, Jarosh, and Fenn) voted to strike down the 2023 abortion laws. Justice Gray voted to uphold the laws. In a footnote, the majority highlighted the State's argument that the language of Article 1, Section 38 was only meant to deal with Obamacare concerns, not abortion choices. The Court recognized it cannot add words to the Wyoming Constitution, that's not its job. But lawmakers could ask Wyoming voters to consider a constitutional amendment that would more clearly address this issue.

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