IN THE SUPREME COURT, STATE OF WYOMING

STATE OF WYOMING, Petitioner, v. CLAYVIN HERRERA, Respondent.	)	Docket No. S-21-0293

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF REVIEW

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Much of what the State says in its Petition is either incorrect or incomplete. It is also astoundingly brazen. It is not every day a party asks this Court to reverse an appellate decision in a misdemeanor criminal case because – so the sole "Question Presented" in the Petition states – "the district court erred when it disagreed with [what] four justices of the United States Supreme Court" said in a ***dissenting opinion***. (Pet. at 8). Of course, as is true for dissents in this Court, U.S. Supreme Court "dissents carry no legal force." *Georgia v. Public.Resource.Org., Inc*; 140 S.Ct. 1498, 1511 (2020) (citation omitted). Instead, it is axiomatic that majority opinions, not dissents, contain the law lower courts are bound by and "must" follow "unless we wish anarchy to prevail[.]" *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (*per curiam*) (holding that "a precedent of this Court must be followed" by the lower courts "no matter how misguided [they] might think it to be," or the hierarchical judicial system "created by the Constitution" will cease to function). The district court properly rejected Wyoming's invitation to anarchy by applying federal issue preclusion law as it is set out in the majority opinion in *Herrera v. Wyoming*, 139 S. Ct. 1686 (2019), not the dissent that Wyoming, confoundingly, continues to champion.

Because the district court applied federal law correctly, and its decision does not conflict with any decision from any other court, there is no need for this Court to intervene. The Supreme Court remanded this matter for Wyoming to litigate the two potential exceptions to Respondent's Treaty-hunting rights, which are otherwise the Supreme Law of the Land. The district court has now complied with that Mandate by remanding for evidentiary hearings. The State's assertion that its paramount interests in

wildlife management are "imperiled" because Wyoming has to follow the same law *that applies to all other states*, is preposterous. The Petition should be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

The pertinent background is as follows:

1. Wyoming charged Respondent Clayvin Herrera ("Herrera"), an enrolled member of the Crow Tribe, with misdemeanor counts of taking an elk out-of-season, thereby applying Wyoming's closed-season law to a Treaty-hunt on federal lands in the Bighorn National Forest ("BHNF"), despite the Crow Tribe having reserved for its members the right "to hunt on the unoccupied lands of the United States" in the Fort Laramie Treaty of 1868. Herrera argued that his Treaty-right to hunt in the BHNF notwithstanding Wyoming's closed-season regulation, had been validated by the United States Supreme Court in its 1999 *Mille Lacs* decision.[1] The circuit court ordered Herrera to not even mention the Treaty at trial, and he was subsequently convicted. *See generally* Petitioner's Appendix ("Pet. App.") D at 2-5.

2. On appeal, the district court determined, *sua sponte*, that collateral estoppel/issue preclusion from "the primary ground" in the Tenth Circuit's *Repsis* decision,[2] precluded Herrera from raising his Treaty-right to hunt on the BHNF. The *Repsis* court had held, in 1995, that Wyoming's1890 statehood had abrogated this Treaty

[1] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999) ("*Mille Lacs"*) (affirming right of treaty-hunters to hunt "free [of] state regulation").

[2] *Crow Tribe of Indians v. Repsis*, 73 F.3d 982 (10th Cir. 1995) ("*Repsis*").

right, relying on *Race Horse*.[3] The district court disagreed with Herrera that, in 1999, *Mille Lacs* had repudiated *Race Horse*, ruling instead that *Mille Lacs* did not prevent Wyoming from claiming (albeit belatedly) issue preclusion. *See* Pet. App. D at 5-16. Alternatively, the district court held even without preclusion from *Repsis*, Wyoming's statehood, or "occupation" via creation of the BHNF, had abrogated the Treaty-right inside Wyoming on the BHNF. *Id.* at 16-18. This Court denied review.

3. Herrera sought a writ of certiorari from the U.S. Supreme Court, which it granted. Following in large part the positions taken by Herrera and the United States in its amicus brief supporting him (Ex. 1, hereto), the *Herrera* Court issued a Mandate and opinion which: (a) held that the Crow Tribe's Treaty-hunting rights did not expire upon Wyoming's statehood but remain valid today, ruling that *Mille Lacs did* repudiate *Race Horse*; (b) reversed the district court's holding that the preclusive force of the *Repsis* decision prevented Herrera from raising his Treaty-rights, and rejected Wyoming's arguments that it should prevail on issue preclusion grounds, instead addressing *Repsis* on the merits; and (c) on the merits, repudiated both the abrogation-by-statehood and BHNF "categorical occupation" holdings in *Repsis*. *Herrera,* 139 S. Ct. at 1691-1703. The Court "vacated" the district court's judgment, and ordered a remand allowing the State of Wyoming – should it decide to proceed with its prosecution – to defend against Herrera's Treaty-rights in "two ways" only – by proving either: (i) that the specific site in the BHNF where the elk were taken was "occupied" as that term is used in the Treaty; or

[3] *Ward v. Race Horse*, 163 U.S. 504 (1896) ("*Race Horse*").

(ii) that Wyoming's then-closed season regulation met the strict requirements of the "conservation necessity" doctrine circa 2014 when the elk were taken. *See Herrera,* 139 S. Ct. at 1691-1703; *see also* Ex.1, U.S. Amicus Brief at 30, n. 4.

4. The Supreme Court directed its writ to the district court, not this Court, vacating its judgment and remanding for decision only on the two potential Treaty exceptions. *Herrera,* 139 S. Ct. at 1703. On remand, however, Wyoming argued that the district court should follow the *Herrera* dissent instead of the majority opinion and hold that issue preclusion from *Repsis* should prevent Herrera from raising the Treaty-rights the Supreme Court had just validated for him. In support of its preclusion argument, Wyoming pointed solely to the *Repsis* "categorical occupation" alternative holding that the high court had firmly repudiated on the merits. *See* Pet. App. C at 1. The district court declined the State's invitation to "anarchy" – *Hutto*, 454 U.S. at 375 – remanding instead to the circuit court to hold evidentiary hearings on the two potential treaty defenses. While allowing the circuit court to address Wyoming's "occupation" preclusion argument, the district court instructed it to do so in a manner "consistent with the opinion of the Supreme Court of the United States." Pet. App. C at 1-2.

5. The circuit court did nothing consistent with the Supreme Court's opinion. Rejecting the *Herrera* majority's Mandate, at the urging of the State it determined instead to follow the *Herrera* dissent. In a 33-page opinion, most of it adopted virtually word-for-word from Wyoming's proposed order, the circuit court held that issue preclusion from the thoroughly-repudiated "occupation ruling of *Repsis*" prevented Herrera from relying on his Treaty-rights, in effect concluding that Wyoming (not Herrera) had

actually prevailed in the Supreme Court. *See* Pet. App. B, pp. 4-5, 32. The circuit court went even further. Despite Wyoming's failure to ever before raise to the Supreme Court, district court, or circuit court as a ground for potential preclusion the single sentence fragment in *Repsis* discussing "conservation necessity," the circuit court embraced this *brand-new* basis for preclusion too. It held that no matter what the Treaty said, or what the highest court in the land had held in *Herrera*, this sentence fragment in "*Repsis* [had] settled the issue" for all time "that Wyoming Game and Fish Department could regulate tribal members hunting in the BNF due to conservation necessity." *Id.* at 5, 32. Herrera appealed to the district court once again.[4]

6. On appeal, the district court reversed the circuit court. First, the district court "conclude[d] that application of issue preclusion was not" proper because, since 1995 when *Respis* was decided, there have been multiple "change[s] in the applicable legal context," an exception to issue preclusion that the *Herrera* Court itself applied. *Id.*

[4] As the Petition notes, the Crow Tribe separately sought Rule 60(b) relief from the federal district court that originally decided *Repsis*, since the judgment in that case is now contrary to both *Herrera* and *Mille Lacs*. Pet. at 7. The State's recitation of the status of that proceeding is incomplete. While the district court did "deny" the Tribe's motion, it did so on the ground that while it agreed its "abrogation by statehood" judgment can no longer stand, only the Tenth Circuit can address its alternative rulings, which were not based on issues reached by the district court. *Id.* (citing ECF order). Via appeal, the Tribe's motion is now before the Tenth Circuit that made those outdated rulings. *Id.*

(quoting *Herrera*, 139 S. Ct. at 1697). Second, the district court also concluded as a "separate reason" for its reversal that issue preclusion cannot properly be based on a 27-year old sentence fragment for a defense like "conservation necessity," which requires ongoing "review" of whether a regulation continues to comply with the controlling, strict federal "conservation necessity" standard. *Id.* at 5 n.1. The district court also held that issue preclusion would not be available, in any event, because the "regulation at issue in *Repsis* was completely different from the regulation at issue in this case," explaining that the State "has the burden of proving that each and every regulation it intends to apply to treaty hunters meets the conservation necessity standard." *Id.*

Not satisfied with the opportunity to attempt to prove the same defenses to valid treaty rights that every other state in the union utilizes, Wyoming now petitions this Court for more. But the State will have its day in court on remand, and after seven years, it is time for prosecution of these misdemeanor citations to come to an end. Either Wyoming can prove in an evidentiary hearing that one of the two remanded exceptions to Herrera's now-validated Treaty rights – site-specific occupation or conservation necessity – applies, or it cannot. The district court properly ordered remand for just that to be determined. This Court should decline review and let this process, as mandated by the United States Supreme Court, finally be completed.

II. STANDARD ON PETITION FOR WRIT OF REVIEW

A decision of a court of limited jurisdiction – like the circuit court – is properly appealed to the district court. *See* Rule 13.01, Wyoming Rules of Appellate Procedure ("W.R.A.P.") and Wyo. Stat. § 5-2-119. A further appeal is allowed only when this

Court grants a petition for writ of review. *Id.; see also Elec. Wholesale Supply Co. v. Fraser*, 2005 WY 105, 356 P.3d 254, 258 (Wyo. 2015). Grant or denial is wholly within this Court's discretion. W.R.A.P. 13.01; *see also Kittles v. Rocky Mtn. Recovery, Inc.*, 1 P.3d 1220, 1222 (Wyo. 2000). When, as here, the decision is plainly correct, and consistent with precedent, review is not merited and this Court should deny review.

Wyoming calls the district court's reversal of the circuit court "an interlocutory order" and "a trial court determination." Pet. at 8-9. But "in accordance with WYO.R.APP.P. 9," the district court – properly sitting as an appellate court, not a trial court – entered a "Mandate Reversing and Remanding Decision," along with its written opinion, *not* an order. *See* Ex. 2, hereto, and W.R.A.P. 9.01 and 9.03. If Wyoming is correct to treat an appellate mandate as an interlocutory order, that would mean it must establish "there are substantial bases for difference of opinion" on the question of law it challenges. Pet. at 8 (quoting W.R.A.P. 13.02). This is a burden Wyoming has not met, and cannot possibly meet, since the district court followed the law as set forth by the United States Supreme Court in its Mandate and opinion in this very case. As shown above, the dissenting comments of individual Supreme Court justices cannot provide "substantial bases for difference of opinion," instead "[a]s every judge learns the hard way, 'comments in a dissenting opinion' about legal principles and precedents 'are just that: comments in a dissenting opinion.'" *Georgia v. Public.Resource.Org.*, 140 S. Ct. at 1511 (quoting *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 177 n. 10 (1980)). Because all Wyoming has to offer is what "four justices of the United States Supreme Court" said in their *Herrera* dissent (Pet. at 8), review by this Court is not warranted.

III. DISCUSSION

A. The District Court's Legally Correct Determination that the *Repsis* Decision Retains No Preclusive Force in this Matter, Does Not Merit Review.

Wyoming posits the court erred because of "the dissent" in *Herrera*. Pet. at 5, 6, 8, 10, 11, 12. That is clearly wrong because a dissent carries no legal force. In fact, everything a dissent says is "implicitly disapproved" by the Majority's "rejection of the dissenter's view." *Hutto*, 454 U.S. at 373; *see also Sprague v. Ticonic National Bank*, 307 U.S. 161, 169 (1939) (the Court's Mandate includes issues "impliedly covered" by its opinion). Thus, the *Herrera* majority opinion – which actually *has* the legal force of binding all lower courts – did, in fact, *reject* Wyoming's preclusion arguments. *See* 139 S.Ct. at 1697-98, 1701 n.5, 1703. The *Herrera* Court: (1) rejected preclusive effect for both the "statehood" and "categorical occupation" rulings in *Repsis* that it repudiated on the merits, holding that "at a minimum, a repudiated decision *does not retain preclusive force*;" (2) explained that Wyoming claimed "the judgment *should be affirmed* because the Tenth Circuit held in *Repsis* that the creation of the forest rendered the land 'occupied,' and thus Herrera is precluded from raising this issue;" and (3) acknowledged "the dissent['s]" agreement with Wyoming on this argument. *Id.* at 1697-98, 1701 n.5. Nonetheless, the Court "*vacated*" rather than "affirmed" the judgment, and "*remanded*" for decision on the "*two*" exceptions of site-specific occupation and conservation necessity, *not* for decision on a third, *i.e.,* issue preclusion. *Id.* at 1703 (emphasis added).

That the Supreme Court rejected Wyoming's multiple preclusion arguments without deciding all of them on their merits is of no moment. The high court can, and often does, rule upon and reject arguments for all manner of reasons. S*ee, e.g., Arizona*

v. California, 530 U.S. 392, 412 (2000) (rejecting state's preclusion argument on grounds of not "eroding the principle of party presentation so basic to our system of adjudication," because, as here, the state "faile[d] to raise the preclusion argument earlier in the litigation").[5] The Mandate controls on remand no matter the Supreme Court's reasoning. *See, e.g., Briggs v. Pennsylvania R. Co.*, 334 U.S. 304, 305-06 (1948) (citing *Ex Parte Sibbald v. United States*, 37 U.S. 488, 492 (1838) ("an inferior court has no power or authority to deviate form the mandate [and] cannot intermeddle with it further than to settle so much as has been remanded")). *See also Quern v. Jordan*, 440 U.S. 332, 347 n. 18 (1979) (Supreme Court will reverse lower court rulings on remand that are "inconsistent with either the spirit or express terms" of its Mandate).

The district court complied with both the spirit and the express terms of the Supreme Court's Mandate by reversing the circuit court's contrary decision. Its main ground for doing so – that "[b]ecause there have been multiple changes in the applicable legal context since the *Repsis* decision was issued, it was improper [for the circuit court] to apply issue preclusion to either the occupation or conservation necessity 'holdings' of

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[5] The irony of the State's false assertion that "the Supreme Court chose to avoid the threshold issue in a rush to decide the merits" should not be lost on this Court. Pet. at 12. The Supreme Court gave its own explanation: Wyoming never argued this below. *Herrera*, 139 S. Ct. at 1701 n. 5 (explaining the district court "gave issue-preclusive effect only to *Repsis'* holding that the 1868 Treaty was no longer valid," not to the "'occupied land' holding," noting "ambiguity in the State's [supplemental] briefing").

that case" – Pet. App. A at 6 – is firmly grounded in the *Herrera* Court's opinion. *See* 139 S. Ct. at 1697-98 (explaining that the "change-in-law" exception "advance[s] the equitable administration of the law" by limiting the judge-made doctrine of issue preclusion to the prevention of "repetitious lawsuits over matters which have … remained substantially static, factually and legally") (internal quotation marks omitted). Wyoming offers no authority to the contrary other than "the dissent in *Herrera*," Pet. at 10, which as shown above, is no authority at all.

Wyoming contends the district court erred on its "change in the context of the law" holding because "[t]here have been no such changes." Pet. at 11. This is simply false. *Mille Lacs*, *Herrera*, and the other post-*Repsis* Supreme Court decisions identified in Herrera's briefing below have utterly transformed the applicable legal context for questions regarding the ongoing validity of Indian-treaty rights from the context that existed when *Repsis* was decided a quarter century ago. The district court identified several of these transformations: (1) the changes wrought by "the *Mille Lacs* case." Pet. App. A at 5. *Mille Lacs* rejected abrogation by executive order, abrogation by subsequent treaty, abrogation by enabling act and abrogation by statehood, and clarified that only by meeting the "conservation necessity" standard can a state's regulations limit treaty hunting and fishing rights. 526 U.S. at 190-93, 199-208. And (2) "the change in the legal context" made by *Herrera*. Pet. App. at 5-6. That change, *inter alia*, includes the high court's validation that "the Fort Laramie Treaty" hunting rights remain in force today, contrary to *Repsis*, and its rejection of the *Repsis* court's determination that

"creation of the Bighorn National Forest" worked an "occupation" that caused the Treaty to "expire of its own accord." Pet. App. A at 6.

Thus, the district court correctly applied the "change-in-law" exception mandated by the *Herrera* opinion. Noting that its decision to reject preclusive force for *Repsis* "is not a marginal case," the *Herrera* Court instructed the lower courts on how "to discern whether a particular legal shift warrants an exception to issue preclusion" from a federal judgment like *Repsis*. 139 S. Ct. at 1698. The Court held: "at a minimum, a repudiated decision" – as *Repsis* clearly is – "*does not retain preclusive force*." *Id.* at 1698 (emphasis added). It really is that simple. Wyoming's complaints (Pet. 10-11) that "the ends of justice" and "principles of finality and repose" should allow it, nonetheless, to breathe preclusive force back into *Repsis* because that is what "[t]he dissent in *Herrera*" says, is but another invitation to the "anarchy" that our hierarchical system of justice rejects. *Hutto*, 454 U.S. at 375. Instead, because the district court correctly concluded that *Repsis* has, indeed, been repudiated – on multiple grounds, by both *Mille Lacs* and *Herrera* – it properly reversed the circuit court's erroneous decision to resuscitate *Repsis*.

Wyoming's assertion that the *Herrera* Court's repudiation of "categorical occupation" cannot itself count as a "change" because it "was not an 'intervening change'" – Pet. at 12 – is not only outrageous, but flat wrong. The change-in-context exception applies to ensure that a party is not "bound by 'an early decision based upon a now repudiated legal doctrine,'" which because of *Herrera* is precisely what the *Repsis* "categorical occupation" doctrine now is. 139 S. Ct. at 1697 (quoting *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 363 (1984)). Herrera receives the benefit of his victory, of

course, because fairness, equity and the Constitution require precisely that. *See, e.g., Danforth v. Minnesota*, 552 U.S. 264, 273-74, 291 (2008) (confirming the long-established due process rule that in criminal proceedings "the party involved in the case in which [a] new rule [is] announced," as well as (at least) all parties in future cases, always receives the benefit of the new law he helped make) (citations omitted). In sum, the district court properly applied the change-in-context exception, just as the *Herrera* decision requires. As such, that decision does not merit this Court's discretionary review.

B. The District Court's Determination that a Conservation Necessity Finding is Necessarily Time Limited Also Does Not Merit Review.

First, essentially conceding that the *Herrera* majority *did* repudiate "the occupation holding in *Repsis*," Wyoming next argues that "even so," the district court nonetheless erred by not giving preclusive force to the single sentence fragment in *Repsis* addressing "conservation necessity." Pet. at 12. Ignoring the fact that it did not raise this preclusion argument to the Supreme Court and, thus, waived it, Wyoming now complains that "the district court did not identify one case or other authority of any kind" that changed the applicable legal context for application of the "conservation necessity" doctrine. Pet. at 11-12. As shown above, that is simply wrong. The district court correctly identified that both *Mille Lacs* and *Herrera* worked significant changes over the earlier context for decisions regarding the continuing validity of rights set forth in Indian treaties that existed when *Repsis* was decided. Pet. App. A at 5-6.

These changes include important clarifications and extensions of the "conservation necessity" doctrine in *Mille Lacs*, explaining how key this doctrine is for "Indian treaty rights [to] coexist with state management of natural resources." 526 U.S. at 204

(clarifying that treaty-based hunting rights provide "freedom from state regulation, curtail[ing] the State's ability to regulate hunting [by tribal members on] ceded [treaty] lands," *which the BHNF lands are*, "a privilege" that non-treaty hunters do not share). *Mille Lacs* provides further important context for how the "conservation necessity" doctrine is to be applied – again, context the *Repsis* court did not have in 1995 – that "although States have important interests in regulating wildlife and natural resources within their borders," as Wyoming argues here (Pet. at 12-13), "this authority is shared with the Federal Government when the Federal Government exercises its enumerated constitutional powers, such as treaty making." 526 U.S. at 204.

In its change-in-context discussion in *Herrera*, the Supreme Court invoked this very change from *Mille Lacs*, rejecting Wyoming's purported need for "'unquestioned authority' over wildlife management in the Bighorn Mountains," that the State asserts again here. 139 S. Ct. at 1698 n. 3. The high court called out Wyoming's failure to "explain why its authority to regulate Indians exercising their treaty rights *when necessary for conservation* is not sufficient" to protect Wyoming's rights and answer its concerns, pointing to its specific remand instructions "*infra*, at 1703," allowing for just that. *Id.* (emphasis added). Wyoming still has no answer for why the same law that binds the other states, imperils it. It doesn't. In short, the change-in-context that *Mille Lacs* worked for the "conservation necessity" doctrine *after Repsis,* alone proves why the district court got this right: there has been too much change since 1995 for an outdated, repudiated decision like *Repsis* to "retain preclusive force." *Herrera*, 139 S. Ct. at 1698.

Second, even were all this not true – which it is – the district court further provided "a separate reason for finding that issue preclusion should not have been applied to the conservation necessity 'holding' in *Repsis*." Pet. App. A at 5 n.1. The court explained that the prerequisites for issue preclusion could not have been met, in any event, because "[t]he [licensing] regulation at issue in *Repsis* [in 1989] was completely different from the [2014 closed-season] regulation that is at issue in this case." *Id.* That is certainly true, thus preventing issue preclusion, which requires precise "identity of issues." *B&B Hardware v. Hargis Industries, Inc.*, 575 U.S. 138, 154 (2015) ("issues are not identical if the second action involves application of a different legal standard, even though the factual setting of both suits may be the same") (citations omitted). The Petition does not address this separate rationale, conceding Wyoming has no answer to it.

Moreover, as the district court also correctly held, "conservation necessity" is simply not static as Wyoming would have it. Instead, state hunting and fishing regulations that may once have met the conservation necessity standard must be "reviewed and revised" often to see if they are still required to protect the species at issue, not simply left in place for decades. *Id.* at 5 n.1 and 6-8 (citing cases applying the "conservation necessity" doctrine, explaining that in reviewing whether state regulations can limit treaty hunting and fishing rights, "the court must accord primacy" to the treaty-rights, and allow to stand "only such limits as are required by the 'comfortable margin' that sound conservation practices dictate" to conserve a species).

Here, there is no doubt that in 2014, and today, elk are overpopulated, including in the BHNF. That was apparently not true in 1995, when the operative facts considered in

Repsis took place. The district court is plainly correct that "conservation necessity," thus, remains a "fact intensive" inquiry, which "can only be properly determined after competent, admissible evidence has been received at an evidentiary hearing" – Pet. App. A at 8 – a determination that is entirely consistent with the *Herrera* Court's remand for consideration of that precise question. 139 S. Ct. at 1698 n. 3, 1703. There is nothing competent or admissible regarding the status of elk in 2014, in the 1992-era affidavits relied on by the circuit court. Pet. App. B at 5-7. Wyoming does not address this separate rationale either, meaning it concedes it, again making review by this Court unwarranted.

IV. CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Review. The district court got this right. It is long-since time for this over seven-year old misdemeanor proceeding to conclude. The United States Supreme Court remanded for decision on the merits of Wyoming's "site-specific occupation" and "conservation necessity" assertions, not issue preclusion from *Repsis*, which the high court rejected. It is simply irrelevant that "the dissent" disagreed. The district court properly complied with the *Herrera* Mandate by finding the circuit court's application of issue preclusion based on the repudiated *Repsis* decision not proper in this case, and by remanding for evidentiary hearings on the "site-specific occupation" and "conservation necessity" exceptions to Herrera's otherwise valid treaty right to hunt in the Bighorn National Forest free from state regulation. The district court's decision is correct and does not merit discretionary review by this Court. The Petition should, therefore, be denied.

DATED this 23rd day of December, 2021.

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I hereby certify that on December 23, 2021, I served the foregoing Response in Opposition to Petition for Writ of Review by U.S. Mail, postage prepaid and addressed as follows:

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In addition, in accordance with Wyo.R.App.P. 1.01(a), this Brief was filed electronically in the Supreme Court using C-Track Electronic Filing System (CTEF), and pursuant to Wyo.R.App.P. 1.01(c)(1), one original and six copies of this Brief was mailed to the Clerk of the Supreme Court.

I have accepted the terms for e-filing and this document is an exact copy of the written document filed with the Clerk. All privacy redactions have been made and this document is free of viruses.

s/ *Hadassah M. Reimer*