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STATE OF MISSOURI)
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CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

The Reverend Traci Blackmon, *et al.*,)
Petitioners,)
vs.) Case No. 2322-CC00120
) Division No. 18
State of Missouri, *et al.*,)
Respondents.)

ORDER AND JUDGMENT

The Court has before it the Motion for Judgment on the Pleadings of Respondents the State of Missouri, Missouri Governor Mike Parson, Missouri Attorney General Andrew Bailey, Marc Taormina and the other officers and members of the Missouri State Board of Registration for the Healing Arts, and Paula F. Nickelson—Acting Director of the Missouri Department of Health and Senior Services ("State Respondents"). The Court now rules as follows.

Petitioners include the Reverend Traci Blackmon, the Reverend Barbara Phifer, Maharat Rori Picker Neiss, the Reverend Molly Housh Gordon, the Right Reverend Deon K. Johnson—Eleventh Bishop of the Episcopal Diocese of Missouri, Rabbi James Bennett, the Reverend Holly McKissick, the Reverend Krista Taves, the Reverend Cynthia S. Bumb, Rabbi Susan Talve, Rabbi Douglas Alpert, the Reverend Janice Barnes, Rabbi Andrea Goldstein, and the Reverend Darryl Gray. Petitioners are all suing in their capacity as Missouri taxpayers alleging certain statutory provisions violate their rights under Article I, Sections 5, 6, and 7 of the Missouri Constitution. In

addition, Petitioner Reverend Molly Housh Gordon is suing based on the alleged substantial risk of harm she faces as a woman of reproductive age arising from the challenged statutory provisions.

On January 19, 2023, Petitioners brought this case seeking, among other things, injunctive and declaratory relief regarding the restriction and regulation of abortions in Missouri. Petitioners were granted leave to file their First Amended Petition ("the Petition") on March 27, 2023. In the Petition, Petitioners challenge several statutory abortion restrictions, including Sections 1.205.1(1-2), 188.017, 188.021.2-3, 188.027, 188.038, 188.039, 188.056, 188.057, 188.058, 188.075.3, and 188.375 RSMo[1], and seek both a declaration that they violate the Missouri Constitution's Establishment Clauses and an injunction against their enforcement. The Petition includes three Counts, claiming these provisions violate Article I, Section 5 of the Missouri Constitution (Count I), Article I, Section 6 of the Missouri Constitution (Count II) and Article I, Section 7 of the Missouri Constitution (Count III).

State Respondents previously filed a motion to dismiss, which this Court granted in part. The Court dismissed Petitioners' claims as to Sections 1.205 and Sections 188.056, 188.057, 188.058, and 188.375 (identified in the Petition as the Gestational Age Regulations), Sections 188.038.2 and 188.038.3 (identified as the Reason Ban), and Sections 188.027 and 188.039 (identified as the 72-Hour Delay and Same Physician Requirements). The rationale for the dismissal of the claims related to these provisions was that they were not ripe, which, for all of these provisions except Section 1.205, was based on the fact that Section 188.017, the total abortion ban provision, largely usurped the field of abortion regulations. Of course, such a dismissal is interlocutory in nature. Thus, if the Court determines Section 188.017 is

[1] All further statutory references are to the current Missouri Revised Statutes, unless otherwise indicated.

unconstitutional, the Court will revisit the claims related to the constitutionality of these dismissed provisions.

Currently remaining before the Court are Petitioners' claims challenging the Total Abortion Ban, Section 188.017, Medication Abortion Restrictions, Section 188.021.2-3, and the Concurrent Original Jurisdiction Provision, Section 188.075.3. The Petition also references several ancillary provisions. These provisions are not necessarily directly challenged, but they are implicated by the challenges to the above provisions. Thus, the Court's analysis will address them. These provisions include the reporting requirements of Section 188.052, as well as the statutory penalties for violating the challenged statutes contained in Sections 188.065 and 558.011. In addition, giving the Petition its broadest possible intendment as required at this time, the Court finds that it challenges Sections 188.010, 188.026, 188.038.4, 197.220, and 197.230. The Court will use the umbrella term "the Challenged Provisions" to refer to all of these statutes.

State Respondents have filed the instant Motion for Judgment on the Pleadings. State Respondents seek judgment on the pleadings in their favor on all Counts as to all remaining Challenged Provisions. To be clear, the only question the Court is addressing in this judgment is whether the Challenged Provisions violate the Establishment Clauses of the Missouri Constitution. It is important to note Petitioners are not claiming the Challenged Provisions violate their right to free exercise of religion.[2] In addition, the Court also notes at the outset that whether the Challenged

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[2] In that context, a government restriction on the free exercise of religion can be upheld if the government's interest is sufficiently compelling, but Petitioners correctly argue such a test has no place in evaluating their claim that the Challenged Provisions violate the Establishment Clauses of the Missouri Constitution.

This is an important point because factually this case can be thought of as the inverse of Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014). In that case, the United States Supreme Court had to decide whether the Religious Freedom Restoration Act of 1993 ("RFRA"), 107 Stat. 1488, 42 U.S.C. § 2000bb et seq., permitted the United States Department of Health and Human Services ("HHS") to demand that three closely held corporations provide health-insurance coverage for methods of contraception that violate the sincerely held religious beliefs of the

Provisions represent sound policy is not for the Court to decide, and thus, will not be addressed by the Court, except to say at this stage of the proceeding the Court is bound to accept all of the Petitioners well-pleaded facts.

The Standard for a Motion for Judgment on the Pleadings

Rule 55.27(b) provides:

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 74.04.

This motion is of common law origin, and it is not favored by the courts. Good Hope Missionary Baptist Church v. St. Louis Alarm Monitoring Co., Inc., 306 S.W.3d 185, 190 (Mo. App. E.D. 2010). The question before the Court on a motion for judgment on the pleadings is whether the moving party is entitled to judgment as a matter of law on the face of the pleadings. Id. Judgment on the pleadings is only appropriate when the question before the court is strictly one of law. Id. A trial court should not grant a motion for judgment on the pleadings if a material issue of fact exists. Id. Such a motion may be sustained only when, under the conceded facts, a

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companies' owners that life begins at conception. Id. at 688. The United States Supreme Court held the regulations that impose this obligation violate RFRA, which prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest. Thus, in that case, because of the plaintiffs' sincerely held religious belief that life begins at conception, they did not have to comply with the HHS requirement.

In this case, instead of private parties arguing the government was infringing on their religious belief that life begins at conception, there are private parties arguing the government is forcing upon them a religious belief that life begins at conception. However, in addition to the differing statuses of the parties in the two cases, the distinction to be made is that Petitioners are not bringing a claim under RFRA, nor are they bringing a free exercise claim. Thus, this case involves a completely different analysis.

judgment different from that pronounced could not be rendered no matter what evidence was produced. Good Hope Missionary Baptist Church, 306 S.W.3d at 190. In other words, it cannot be sustained unless, under the admitted facts the moving party is entitled to judgment, without regard to what the findings might be on the facts. Id.

The party that moves for judgment on the pleadings admits, for purposes of the motion, the truth of all well-pleaded facts in the opposing party's pleadings. Id. at 191. However, the movant does not admit the pleader's conclusions or construction of the subject matter. Id. "This Court will not 'blindly accept the legal conclusions drawn by the pleaders from the facts.'" Ocello v. Koster, 354 S.W.3d 187, 197 (Mo. banc 2011)(quoting Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990)).

A right to judgment on the pleadings must be established by the allegations in the opposing party's pleadings. In re Marriage of Busch, 310 S.W.3d 253, 259 (Mo. App. E.D. 2010). Matters quoted in, attached to, or incorporated by reference into the pleadings may be considered. Id. However, matters not properly incorporated into the pleadings may not be considered. Id. A trial court may not consider unpleaded matters by taking judicial notice of them. Id. However, the Court is bound to take judicial notice of statutes. Newson v. City of Kansas City, 606 S.W.2d 487, 490 (Mo. App. W.D. 1980).

A motion for judgment on the pleadings shares similarities with a motion to dismiss for failure to state a claim, but it is also distinct. In re Marriage of Busch, 310 S.W.3d at 260. A defending party who makes a motion for judgment on the pleadings is in the same position as a defending party who makes a motion to dismiss for failure to state a claim. Id. In both situations, the defending party's position is that even if all of plaintiff's well-pleaded facts are true, they are

insufficient as a matter of law. Id. However, a motion to dismiss is made before the filing of an answer; whereas, a motion for judgment on the pleadings is not made until the pleadings are closed. Id. Further, if a court sustains a motion to dismiss, it shall freely grant leave to amend. In re Marriage of Busch, 310 S.W.3d at 260. However, a motion for judgment on the pleadings contemplates a final judgment on the merits. Id.

The Challenged Provisions

The Challenged Provisions that remain at issue provide as follows:

Section 188.017, identified in the Petition as the Total Abortion Ban[3], states:

> 1. This section shall be known and may be cited as the "Right to Life of the Unborn Child Act".
>
> 2. Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection.
>
> 3. It shall be an affirmative defense for any person alleged to have violated the provisions of subsection 2 of this section that the person performed or induced an abortion because of a medical emergency. The defendant shall have the burden of persuasion that the defense is more probably true than not.
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> *4. The enactment of this section shall only become effective upon notification to the revisor of statutes by an opinion by the attorney general of Missouri, a proclamation by the governor of Missouri, or the adoption of a concurrent resolution by the Missouri general assembly that:[4]

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[3] Even though subsection 1 provides a nickname for this Section, this judgment will refer to it as the total abortion ban. No value judgment is suggested by using that term. The Court simply finds the formal nickname could be confusing in the context of this judgment.

[4] The Missouri Attorney General and Governor acted pursuant to this subsection to bring about Missouri's total abortion ban shortly after the United States Supreme Court overruled Roe v. Wade, 410 U.S. 113 (1973) in Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022).

(1) The United States Supreme Court has overruled, in whole or in part, Roe v. Wade, 410 U.S. 113 (1973), restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section, and that as a result, it is reasonably probable that this section would be upheld by the court as constitutional;

(2) An amendment to the Constitution of the United States has been adopted that has the effect of restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section; or

(3) The United States Congress has enacted a law that has the effect of restoring or granting to the state of Missouri the authority to regulate abortion to the extent set forth in this section.

Section 188.021, identified as the Medication Abortion Restrictions in the Petition, states in pertinent part:

1. When RU-486 (mifepristone) or any drug or chemical is used for the purpose of inducing an abortion, the initial dose of the drug or chemical shall be administered in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient. The physician inducing the abortion, or a person acting on such physician's behalf, shall make all reasonable efforts to ensure that the patient returns after the administration or use of RU-486 or any drug or chemical for a follow-up visit unless such termination of the pregnancy has already been confirmed and the patient's medical condition has been assessed by a licensed physician prior to discharge.

2. When the Food and Drug Administration label of any drug or chemical used for the purpose of inducing an abortion includes any clinical study in which more than one percent of those administered the drug or chemical required surgical intervention after its administration, no physician may prescribe or administer such drug or chemical to any patient without first obtaining approval from the department of health and senior services of a complication plan from the physician for administration of the drug or chemical to any patient. The complication plan shall include any information deemed necessary by the department to ensure the safety of any patient suffering complications as a result of the administration of the drug or chemical in question. No complication plan shall be required where the patient is administered the drug in a medical emergency at a hospital and is then treated as an inpatient at a hospital under medical monitoring by the hospital until the abortion is completed.

Section 188.075, identified in the Petition as the Concurrent Original Jurisdiction Provision, states:

> 1. Any person who contrary to the provisions of sections 188.010 to 188.085 knowingly performs, induces, or aids in the performance or inducing of any abortion or knowingly fails to perform any action required by sections 188.010 to 188.085 shall be guilty of a class A misdemeanor, unless a different penalty is provided for in state law, and, upon conviction, shall be punished as provided by law.
>
> 2. It shall be an affirmative defense for any person alleged to have violated any provision of this chapter that the person performed an action or did not perform an action because of a medical emergency. This affirmative defense shall be available in criminal, civil, and administrative actions or proceedings. The defendant shall have the burden of persuasion that the defense is more probably true than not.
>
> 3. The attorney general shall have concurrent original jurisdiction throughout the state, along with each prosecuting attorney and circuit attorney within their respective jurisdictions, to commence actions for a violation of any provision of this chapter, for a violation of any state law on the use of public funds for an abortion, or for a violation of any state law which regulates an abortion facility or a person who performs or induces an abortion. The attorney general, or prosecuting attorney or circuit attorney within their respective jurisdictions, may seek injunctive or other relief against any person who, or entity which, is in violation of any provision of this chapter, misuses public funds for an abortion, or violates any state law which regulates an abortion facility or a person who performs or induces an abortion.

Section 188.010 states:

> In recognition that Almighty God is the author of life, that all men and women are "endowed by their Creator with certain unalienable Rights, that among these are Life", and that Article I, Section 2 of the Constitution of Missouri provides that all persons have a natural right to life, it is the intention of the general assembly of the state of Missouri to:
>
> (1) Defend the right to life of all humans, born and unborn;
>
> (2) Declare that the state and all of its political subdivisions are a "sanctuary of life" that protects pregnant women and their unborn children; and
>
> (3) Regulate abortion to the full extent permitted by the Constitution of the United States, decisions of the United States Supreme Court, and federal statutes.

Section 188.052 states in pertinent part:

> An individual complication report for any post-abortion care performed upon a woman shall be completed by the physician providing such post-abortion care. This report shall include:
>
> (1) The date of the abortion;
>
> (2) The name and address of the abortion facility or hospital where the abortion was performed or induced;
>
> (3) The nature of the abortion complication diagnosed or treated.

Section 188.065 states: "Any practitioner of medicine, surgery, or nursing, or other health personnel who shall willfully and knowingly do or assist any action made unlawful by sections 188.010 to 188.085 shall be subject to having his license, application for license, or authority to practice his profession as a physician, surgeon, or nurse in the state of Missouri rejected or revoked by the appropriate state licensing board."

Section 188.038.4 states: "Any physician or other person who performs or induces or attempts to perform or induce an abortion prohibited by this section shall be subject to all applicable civil penalties under this chapter including, but not limited to, sections 188.065 and 188.085."

Section 197.230 provides for the inspection and investigation of abortion facilities by the department of health and senior services to ensure compliance with chapter 188.

Section 197.220 states "[t]he department of health and senior services may deny, suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of sections 197.200 to 197.240..."

Section 558.011 provides the authorized terms of imprisonment for class B felonies and class A misdemeanors.

Lastly, the Court reproduces for the reader Section 188.026, which is unparalleled in the Missouri Revised Statutes with respect to the length and detail of legislative findings. However, it is provided here in full because it is critical to understanding the legislature's action on abortion. Section 188.026 provides:

> 1. This section and sections 188.056, 188.057, and 188.058 shall be known and may be cited as the "Missouri Stands for the Unborn Act".
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> 2. In Roe v. Wade, 410 U.S. 113 (1973), certain information about the development of the unborn child, human pregnancy, and the effects of abortion was either not part of the record or was not available at the time. Since 1973, advances in medical and scientific technology have greatly expanded our knowledge of prenatal life and the effects of abortion on women. The general assembly of this state finds:
>
> (1) At conception, a new genetically distinct human being is formed;
>
> (2) The fact that the life of an individual human being begins at conception has long been recognized in Missouri law: "[T]he child is, in truth, alive from the moment of conception". State v. Emerich, 13 Mo. App. 492, 495 (1883), affirmed, 87 Mo. 110 (1885). Under section 1.205, the general assembly has recognized that the life of each human being begins at conception and that unborn children have protectable interests in life, health, and well-being;
>
> (3) The first prohibition of abortion in Missouri was enacted in 1825. Since then, the repeal and reenactment of prohibitions of abortion have made distinctions with respect to penalties for performing or inducing abortion on the basis of "quickening"; however, the unborn child was still protected from conception onward;
>
> (4) In ruling that Missouri's prohibition on abortion was constitutional in 1972, the Missouri supreme court accepted as a stipulation of the parties that '"[i]nfant Doe, Intervenor Defendant in this case, and all other unborn children have all the qualities and attributes of adult human persons differing only in age or maturity. Medically, human life is a continuum from conception to death."' Rodgers v. Danforth, 486 S.W.2d 258, 259 (1972);

(5) In Webster v. Reproductive Health Services, 492 U.S. 490 (1989), the Supreme Court, while considering the "preamble" that set forth "findings" in section 1.205, stated: "We think the extent to which the preamble's language might be used to interpret other state statutes or regulations is something that only the courts of Missouri can definitively decide. State law has offered protections to unborn children in tort and probate law". Id. at 506. Since Webster, Missouri courts have construed section 1.205 and have consistently found that an unborn child is a person for purposes of Missouri's homicide and assault laws when the unborn child's mother was killed or assaulted by another person. Section 1.205 has even been found applicable to the manslaughter of an unborn child who was eight weeks gestational age or earlier. State v. Harrison, 390 S.W.3d 927 (Mo. Ct. App. 2013);

(6) In medicine, a special emphasis is placed on the heartbeat. The heartbeat is a discernible sign of life at every stage of human existence. During the fifth week of gestational age, an unborn child's heart begins to beat and blood flow begins during the sixth week;

(7) Depending on the ultrasound equipment being used, the unborn child's heartbeat can be visually detected as early as six to eight weeks gestational age. By about twelve weeks gestational age, the unborn child's heartbeat can consistently be made audible through the use of a handheld Doppler fetal heart rate device;

(8) Confirmation of a pregnancy can be indicated through the detection of the unborn child's heartbeat, while the absence of a heartbeat can be an indicator of the death of the unborn child if the child has reached the point of development when a heartbeat should be detectable;

(9) Heart rate monitoring during pregnancy and labor is utilized to measure the heart rate and rhythm of the unborn child, at an average rate between one hundred ten and one hundred sixty beats per minute, and helps determine the health of the unborn child;

(10) The Supreme Court in Roe discussed "the difficult question of when life begins" and wrote: "[p]hysicians and their scientific colleagues have regarded [quickening] with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes 'viable', that is, potentially able to live outside the mother's womb, albeit with artificial aid". Roe, 410 U.S. at 160. Today, however, physicians' and scientists' interests on life in the womb also focus on other markers of development in the unborn child, including, but not limited to, presence of a heartbeat, brain development, a viable pregnancy or viable intrauterine pregnancy during the first trimester of pregnancy, and the ability to experience pain;

(11) In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), the Supreme Court noted that "we recognized in Roe that viability was a matter of medical judgment, skill, and technical ability, and we preserved the flexibility of the term". Id. at 64. Due to advances in medical technology and diagnoses, present-day physicians and scientists now describe the viability of an unborn child in an additional manner, by determining whether there is a viable pregnancy or viable intrauterine pregnancy during the first trimester of pregnancy;

(12) While the overall risk of miscarriage after clinical recognition of pregnancy is twelve to fifteen percent, the incidence decreases significantly if cardiac activity in the unborn child has been confirmed. The detection of a heartbeat in an unborn child is a reliable indicator of a viable pregnancy and that the unborn child will likely survive to birth, especially if presenting for a prenatal visit at eight weeks gestational age or later. For asymptomatic women attending a first prenatal visit between six and eleven weeks gestational age where a heartbeat was confirmed through an ultrasound, the subsequent risk of miscarriage is one and six-tenths percent. Although the risk is higher at six weeks gestational age at nine and four-tenths percent, it declines rapidly to one and five-tenths percent at eight weeks gestational age, and less than one percent at nine weeks gestational age or later;

(13) The presence of a heartbeat in an unborn child represents a more definable point of ascertaining survivability than the ambiguous concept of viability that has been adopted by the Supreme Court, especially since if a heartbeat is detected at eight weeks gestational age or later in a normal pregnancy, there is likely to be a viable pregnancy and there is a high probability that the unborn child will survive to birth;

(14) The placenta begins developing during the early first trimester of pregnancy and performs a respiratory function by making oxygen supply to and carbon dioxide removal from the unborn child possible later in the first trimester and throughout the second and third trimesters of pregnancy;

(15) By the fifth week of gestation, the development of the brain of the unborn child is underway. Brain waves have been measured and recorded as early as the eighth week of gestational age in children who were removed during an ectopic pregnancy or hysterectomy. Fetal magnetic resonance imaging (MRI) of an unborn child's brain is used during the second and third trimesters of pregnancy and brain activity has been observed using MRI;

(16) Missouri law identifies the presence of circulation, respiration, and brain function as indicia of life under section 194.005, as the presence of circulation, respiration, and brain function indicates that such person is not legally dead, but is legally alive;

(17) Unborn children at eight weeks gestational age show spontaneous movements, such as a twitching of the trunk and developing limbs. It has been reported that unborn children at this stage show reflex responses to touch. The perioral area is the first part of the unborn child's body to respond to touch at about eight weeks gestational age and by fourteen weeks gestational age most of the unborn child's body is responsive to touch;

(18) Peripheral cutaneous sensory receptors, the receptors that feel pain, develop early in the unborn child. They appear in the perioral cutaneous area at around seven to eight weeks gestational age, in the palmar regions at ten to ten and a half weeks gestational age, the abdominal wall at fifteen weeks gestational age, and over all of the unborn child's body at sixteen weeks gestational age;

(19) Substance P, a peptide that functions as a neurotransmitter, especially in the transmission of pain, is present in the dorsal horn of the spinal cord of the unborn child at eight to ten weeks gestational age. Enkephalins, peptides that play a role in neurotransmission and pain modulation, are present in the dorsal horn at twelve to fourteen weeks gestational age;

(20) When intrauterine needling is performed on an unborn child at sixteen weeks gestational age or later, the reaction to this invasive stimulus is blood flow redistribution to the brain. Increased blood flow to the brain is the same type of stress response seen in a born child and an adult;

(21) By sixteen weeks gestational age, pain transmission from a peripheral receptor to the cortex is possible in the unborn child;

(22) Physicians provide anesthesia during in utero treatment of unborn children as early as sixteen weeks gestational age for certain procedures, including those to correct fetal urinary tract obstruction. Anesthesia is administered by ultrasound-guided injection into the arm or leg of the unborn child;

(23) A leading textbook on prenatal development of the human brain states, "It may be concluded that, although nociperception (the actual perception of pain) awaits the appearance of consciousness, nociception (the experience of pain) is present some time before birth. In the absence of disproof, it is merely prudent to assume that pain can be experienced even early in prenatal life (Dr. J. Wisser, Zürich): the fetus should be given the benefit of the doubt". Ronan O'Rahilly & Fabiola Müller. The Embryonic Human Brain: An Atlas of Developmental Stages (3d ed. 2005);

(24) By fourteen or fifteen weeks gestational age or later, the predominant abortion method in Missouri is dilation and evacuation (D&E). The D&E abortion

method includes the dismemberment, disarticulation, and exsanguination of the unborn child, causing the unborn child's death;

(25) The Supreme Court acknowledged in Gonzales v. Carhart, 550 U.S. 124, 160 (2007), that "the standard D&E is in some respects as brutal, if not more, than the intact D&E" partial birth abortion method banned by Congress and upheld as facially constitutional by the Supreme Court, even though the federal ban was applicable both before and after viability and had no exception for the health of the mother;

(26) Missouri's ban on the partial birth abortion method, section 565.300, is in effect because of Gonzales v. Carhart and the Supreme Court's subsequent decision in Nixon v. Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc., 550 U.S. 901 (2007), to vacate and remand to the appellate court the prior invalidation of section 565.300. Since section 565.300, like Congress' ban on partial birth abortion, is applicable both before and after viability, there is ample precedent for the general assembly to constitutionally prohibit the brutal D&E abortion method at fourteen weeks gestational age or later, even before the unborn child is viable, with a medical emergency exception;

(27) In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court determined that "evolving standards of decency" dictated that a Missouri statute allowing the death penalty for a conviction of murder in the first degree for a person under eighteen years of age when the crime was committed was unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution because it violated the prohibition against "cruel and unusual punishments";

(28) In Bucklew v. Precythe, 139 S. Ct. 1112, 1123 (2019), the Supreme Court noted that "'[d]isgusting' practices" like disemboweling and quartering "readily qualified as 'cruel and unusual', as a reader at the time of the Eighth Amendment's adoption would have understood those words";

(29) Evolving standards of decency dictate that Missouri should prohibit the brutal and painful D&E abortion method at fourteen weeks gestational age or later, with a medical emergency exception, because if a comparable method of killing was used on:

(a) A person convicted of murder in the first degree, it would be cruel and unusual punishment; or

(b) An animal, it would be unlawful under state law because it would not be a humane method, humane euthanasia, or humane killing of certain animals under chapters 273 and 578;

(30) In Roper, the Supreme Court also found that "[i]t is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty.... The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions". Roper, 543 U.S. at 578. In its opinion, the Supreme Court was instructed by "international covenants prohibiting the juvenile death penalty", such as the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171. Id. at 577;

(31) The opinion of the world community, reflected in the laws of the United Nation's 193-member states and six other entities, is that in most countries, most abortions are prohibited after twelve weeks gestational age or later;

(32) The opinion of the world community is also shared by most Americans, who believe that most abortions in the second and third trimesters of pregnancy should be illegal, based on polling that has remained consistent since 1996;

(33) Abortion procedures performed later in pregnancy have a higher medical risk for women. Compared to an abortion at eight weeks gestational age or earlier, the relative risk increases exponentially at later gestational ages. The relative risk of death for a pregnant woman who had an abortion performed or induced upon her at:

(a) Eleven to twelve weeks gestational age is between three and four times higher than an abortion at eight weeks gestational age or earlier;

(b) Thirteen to fifteen weeks gestational age is almost fifteen times higher than an abortion at eight weeks gestational age or earlier;

(c) Sixteen to twenty weeks gestational age is almost thirty times higher than an abortion at eight weeks gestational age or earlier; and

(d) Twenty-one weeks gestational age or later is more than seventy-five times higher than an abortion at eight weeks gestational age or earlier;

(34) In addition to the short-term risks of an abortion, studies have found that the long-term physical and psychological consequences of abortion for women include, but are not limited to, an increased risk of preterm birth, low birthweight babies, and placenta previa in subsequent pregnancies, as well as serious behavioral health issues. These risks increase as abortions are performed or induced at later gestational ages. These consequences of an abortion have a detrimental effect not only on women, their children, and their families, but also on an already burdened health care system, taxpayers, and the workforce;

(35) A large percentage of women who have an abortion performed or induced upon them in Missouri each year are at less than eight weeks gestational age, a large majority are at less than fourteen weeks gestational age, a larger majority are at less than eighteen weeks gestational age, and an even larger majority are at less than twenty weeks gestational age. A prohibition on performing or inducing an abortion at eight weeks gestational age or later, with a medical emergency exception, does not amount to a substantial obstacle to a large fraction of women for whom the prohibition is relevant, which is pregnant women in Missouri who are seeking an abortion while not experiencing a medical emergency. The burden that a prohibition on performing or inducing an abortion at eight, fourteen, eighteen, or twenty weeks gestational age or later, with a medical emergency exception, might impose on abortion access, is outweighed by the benefits conferred upon the following:

(a) Women more advanced in pregnancy who are at greater risk of harm from abortion;

(b) Unborn children at later stages of development;

(c) The medical profession, by preserving its integrity and fulfilling its commitment to do no harm; and

(d) Society, by fostering respect for human life, born and unborn, at all stages of development, and by lessening societal tolerance of violence against innocent human life;

(36) In Webster, the Supreme Court noted, in upholding a Missouri statute, "that there may be a 4-week error in estimating gestational age". Webster, 492 U.S. at 516. Thus, an unborn child thought to be eight weeks gestational age might in fact be twelve weeks gestational age, when an abortion poses a greater risk to the woman and the unborn child is considerably more developed. An unborn child at fourteen weeks gestational age might be eighteen weeks gestational age and an unborn child at eighteen weeks gestational age might be twenty-two weeks gestational age, when an abortion poses a greater risk to the woman, the unborn child is considerably more developed, the abortion method likely to be employed is more brutal, and the risk of pain experienced by the unborn child is greater. An unborn child at twenty weeks gestational age might be twenty-four weeks gestational age, when an abortion poses a greater risk to the woman, the unborn child is considerably more developed, the abortion method likely to be employed is more brutal, the risk of pain experienced by the unborn child is greater, and the unborn child may be viable.

3. The state of Missouri is bound by Article VI, Clause 2 of the Constitution of the United States that "all treaties made, or which shall be made, under the authority of

the United States, shall be the supreme law of the land". One such treaty is the International Covenant on Civil and Political Rights, entered into force on March 23, 1976, and adopted by the United States on September 8, 1992. In ratifying the Covenant, the United States declared that while the provisions of Articles 1 through 27 of the Covenant are not self-executing, the United States' understanding is that state governments share responsibility with the federal government in implementing the Covenant.

4. Article 6, Paragraph 1, U.N.T.S. at 174, of the International Covenant on Civil and Political Rights states, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". The state of Missouri takes seriously its obligation to comply with the Covenant and to implement this paragraph as it relates to the inherent right to life of unborn human beings, protecting the rights of unborn human beings by law, and ensuring that such unborn human beings are not arbitrarily deprived of life. The state of Missouri hereby implements Article 6, Paragraph 1 of the Covenant by the regulation of abortion in this state.

5. The state of Missouri has interests that include, but are not limited to:

(1) Protecting unborn children throughout pregnancy and preserving and promoting their lives from conception to birth;

(2) Encouraging childbirth over abortion;

(3) Ensuring respect for all human life from conception to natural death;

(4) Safeguarding an unborn child from the serious harm of pain by an abortion method that would cause the unborn child to experience pain while she or he is being killed;

(5) Preserving the integrity of the medical profession and regulating and restricting practices that might cause the medical profession or society as a whole to become insensitive, even disdainful, to life. This includes regulating and restricting abortion methods that are not only brutal and painful, but if allowed to continue, will further coarsen society to the humanity of not only unborn children, but all vulnerable and innocent human life, making it increasingly difficult to protect such life;

(6) Ending the incongruities in state law by permitting some unborn children to be killed by abortion, while requiring that unborn children be protected in nonabortion circumstances through, including, but not limited to, homicide, assault, self-defense, and defense of another statutes; laws guaranteeing prenatal health care, emergency care, and testing; state-sponsored health insurance for unborn

children; the prohibition of restraints in correctional institutions to protect pregnant offenders and their unborn children; and protecting the interests of unborn children by the appointment of conservators, guardians, and representatives;

(7) Reducing the risks of harm to pregnant women who obtain abortions later in pregnancy; and

(8) Avoiding burdens on the health care system, taxpayers, and the workforce because of increased preterm births, low birthweight babies, compromised pregnancies, extended postpartum recoveries, and behavioral health problems caused by the long-term effects of abortions performed or induced later in the pregnancy.

Bearing in mind that Petitioners' claim is that the above Challenged Provisions violate the Missouri Constitution's Establishment Clauses and having detailed the substance of those Challenged Provisions, the Court will now turn its attention to the Missouri Constitution's Establishment Clauses.

The Standard for Evaluating Potential Violations of the Missouri Constitution's Establishment Clauses

Before proceeding to the arguments of the parties, the Court notes initially that there is disagreement between the parties about the standard to apply to evaluate alleged violations of the Missouri Constitution's Establishment Clauses.

The Missouri Constitution's Establishment Clauses provide:

That all men and women have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his or her religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his or her person or estate; that to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed; that the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as

such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly; that citizens as well as elected officials and employees of the state of Missouri and its political subdivisions shall have the right to pray on government premises and public property so long as such prayers abide within the same parameters placed upon any other free speech under similar circumstances; that the General Assembly and the governing bodies of political subdivisions may extend to ministers, clergypersons, and other individuals the privilege to offer invocations or other prayers at meetings or sessions of the General Assembly or governing bodies; that students may express their beliefs about religion in written and oral assignments free from discrimination based on the religious content of their work; that no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs; that the state shall ensure public school students their right to free exercise of religious expression without interference, as long as such prayer or other expression is private and voluntary, whether individually or corporately, and in a manner that is not disruptive and as long as such prayers or expressions abide within the same parameters placed upon any other free speech under similar circumstances; and, to emphasize the right to free exercise of religious expression, that all free public schools receiving state appropriations shall display, in a conspicuous and legible manner, the text of the Bill of Rights of the Constitution of the United States; but this section shall not be construed to expand the rights of prisoners in state or local custody beyond those afforded by the laws of the United States, excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others;

Article I, Section 5 of the Missouri Constitution.

That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same;

Article I, Section 6 of the Missouri Constitution.

That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

Article I, Section 7 of the Missouri Constitution.

Petitioners contend "[t]he Missouri Constitution deals with separation of church and state

with greater particularity than the United States Constitution." Boone v. State, 147 S.W.3d 801, 805 (Mo. App. E.D. 2004). Notwithstanding the robust body of caselaw interpreting the Establishment Clause in the U.S. Constitution, this greater particularity of the Missouri Constitution seems evident when one merely compares the above provisions to the plain text of the Establishment Clause in the U.S. Constitution, which provides in ten words that "Congress shall make no law respecting an establishment of religion . . .." However, the above-mentioned additional particularity has not been extensively developed in caselaw. The only concrete example the Court could find is that the Missouri Constitution is more restrictive "than the First Amendment to the United States Constitution in prohibiting expenditures of public funds in a manner tending to erode an absolute separation of church and state." Americans United v. Rogers, 538 S.W.2d 711, 720 (Mo. banc 1976); see also Oliver v. State Tax Com'n of Missouri, 37 S.W.3d 243, 251 (Mo. banc 2001).

Traditionally, in evaluating potential violations of the U.S. Constitution's Establishment Clause, courts often applied the Lemon test, but did not do so exclusively. See Doe v. Parson, 567 S.W.3d 625, 632 fn. 3 (Mo. banc 2019) (C.J. Fischer concur)(noting the three-prong Lemon test is not the exclusive framework to analyze a challenge under the Establishment Clause). The Lemon test established that a challenged provision did not violate the U.S. Constitution's Establishment Clause if it had (1) a secular legislative purpose; (2) a primary effect other than the advancement of religion; and (3) no tendency to excessively entangle the State in church affairs. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

However, the United States Supreme Court has noted it "long ago abandoned Lemon and its endorsement test offshoot." Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 534, 142 S. Ct.

2407, 2428 (2022). Instead, the United States Supreme Court has found "the [U.S. Constitution's] Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" Id. at 535; quoting Town of Greece, 572 U.S. 565, 576 (2014). The demarcation that courts and governments must make between the permissible and the impermissible has to be consistent with history and faithfully reflect the understanding of the "Founding Fathers." Id. An analysis focused on original meaning and history, the United States Supreme Court has stressed, has long represented the rule rather than some exception to its Establishment Clause jurisprudence. Id.

With respect to the abandonment of the Lemon test, the Court notes courts in Missouri were already applying a more historical analysis for Missouri's Establishment Clauses even before Kennedy. See Oliver v. State Tax Com'n of Missouri, 37 S.W.3d 243, 250 (Mo. banc 2001).

However, Missouri Courts have in the past also applied some version of the Lemon test to evaluate potential violations of both the U.S. Constitution and the Missouri Constitution in Menorah Med. Ctr. v. Health & Educ. Facilities Auth., 584 S.W.2d 73, 87 (Mo. banc 1979) and Americans United v. Rogers, 538 S.W.2d 711, 721 (Mo. banc 1976).

Because the United States Supreme Court has abandoned the Lemon test for evaluating potential violations of the U.S. Constitution's Establishment Clause and the Lemon test also has not been exclusively used by Missouri Courts, the Court finds it should no longer be used in cases dealing with the Missouri Constitution's Establishment Clauses either. That said, its factors may still be relevant in the context of an evaluation of historical practices and understandings. Thus, the Court finds that alleged violations of the Missouri Constitution's Establishment Clauses are properly evaluated by reference to historical practices and understandings consistent with the

United States Supreme Court's holding in Kennedy.

Arguments and Analysis

In this case, State Respondents contend that this Court should grant judgment on the pleadings in their favor for three reasons. First, binding precedent requires judgment against Petitioners. Second, the Challenged Provisions do not violate the Missouri Constitution. Third, the canon of constitutional avoidance favors ruling against Petitioners because their interpretation would violate the U.S. Constitution. The Court will address each argument.

a. Precedent

Turning now to the State Respondents' first argument, they contend binding precedent requires judgment against Petitioners. In particular, State Respondents contend that this Court is bound by the Missouri Supreme Court's decision in Rodgers v. Danforth, 486 S.W.2d 258 (Mo. banc 1972). State Respondents contend that the Missouri Supreme Court determined in Rodgers that abortion regulations similar to the ones challenged in this suit are not an establishment of religion. This Court has carefully reviewed Rodgers and finds that its holding is more limited.

First, in Rodgers, the parties stipulated:

> Infant Doe, Intervenor Defendant in this case, and all other unborn children have all the qualities and attributes of adult human persons differing only in age or maturity. Medically, human life is a continuum from conception to death.

Rodgers, 486 S.W.2d at 259. Moreover, in Rodgers, the Missouri Supreme Court considered the Supreme Court's ruling in Furman v. Georgia, 408 U.S. 238 (1972) as follows: "As we read the opinions in Furman, *supra*, the Court generally expressed its disapproval of the practice of putting to death persons who, some would argue, had forfeited their right to live. We believe we must anticipate at least equal solicitude for the lives of innocents." Rodgers, 486 S.W.2d at 259. The

Missouri Supreme Court ultimately held: "In view of the positions taken by the Justices of the United States Supreme Court in Furman, *supra*, we hold, on the facts in this case, that § 559.100, *supra*, [the statute which prohibited/criminalized abortion at issue] is constitutional." Id.

The Court finds that the Missouri Supreme Court's holding in Rodgers is distinguishable from the instant case because it is premised on stipulated facts that are not so stipulated here.[5] Rodgers, 486 S.W.2d at 259. In addition, the plaintiffs in Rodgers solely brought claims under the Constitution of the United States and did not bring claims under the Missouri Constitution. Id. at 258. Further, merely because the Missouri Supreme Court found the statute at issue in Rodgers constitutional, does not mean all statutes treating the same subject will be constitutional. Thus, the Court finds its decision in this case is not bound by Rodgers as the State Respondents contend.

b. Do the Challenged Provisions Violate the Missouri Constitution?

Next, turning to State Respondents' second argument that the Challenged Provisions do not violate the Missouri Constitution, State Respondents argue that Petitioners cannot meet their burden of showing that the Challenged Provisions violate the Missouri Constitution for three reasons: first, Petitioners have not pleaded and cannot plead that the Challenged Provisions advance the view of one religion[6]; second, the 200-year history of abortion restriction in Missouri provides powerful evidence that the Challenged Provisions are constitutional; and third, any alleged religious comments by legislators in no way make the Challenged Provisions

[5] The Court notes the dissenting opinion does not believe the quoted stipulation is actually a fact. Rodgers, 486 S.W.2d at 261(noting "I do not consider myself bound by a stipulation which purports to establish as an immutable fact that a month old embryo is the same, except for age and maturity, as an adult.")

[6] This factor originates from the Lemon test and, as a result, will only be addressed as it relates to historical practices and understandings.

unconstitutional. The Court will begin with the third argument before addressing the second and first arguments together.

i. Legislator Comments

Large portions of the parties' arguments centered around comments made by legislators concerning their religious motivations for supporting the Challenged Provisions. However, the Court finds that the individual comments by legislators should be given little to no consideration when determining the constitutional validity of the Challenged Provisions. "[A court] will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." Ocello, 354 S.W.3d at 202; (quoting United States v. O'Brien, 391 U.S. 367, 384 (1968)). "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork." Id.; see also Strandberg v. Kansas City, 415 S.W.2d 737, 742 (Mo. banc 1967); Schweig v. City of St. Louis, 569 S.W.2d 215, 228 (Mo. App. E.D. 1978); and Coffin v. City of Lee's Summit, 357 S.W.2d 211, 214 (Mo. App. W.D. 1962). "Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we have been reluctant to attribute those motives to the legislative body as a whole." Dobbs, 597 U.S. at 253-54.

Instead of the comments of legislators, the appropriate inquiry to determine intent is to follow the rules of statutory interpretation. "This Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." Black River Motel v. Patriots Bank, 669 S.W.3d 116, 122 (Mo. banc 2023). "This Court will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result." Id. As a result, the Court finds that it should determine the purpose and intent

of the Challenged Provisions as evidenced by the plain language of the statutes. However, the Court still makes the determination of whether it violates the Establishment Clauses "by 'reference to historical practices and understandings.'" Kennedy, 597 U.S. at 535.

The other thing to keep in mind when considering a challenge to the constitutionality of a legislative enactment is that this Court is guided by the established principle that the Missouri Constitution, unlike the U.S. Constitution, is not a grant of power, but as to legislative power, it is only a limitation; and, therefore, except for the restrictions imposed by the Missouri Constitution, the power of the state legislature is unlimited and practically absolute. Americans United v. Rogers, 538 S.W.2d 711, 716 (Mo. banc 1976). A statute is presumed to be valid and will be found unconstitutional only if it clearly and unambiguously contravenes a constitutional provision. Id.; see also State v. Shanklin, 534 S.W.3d 240, 241-42 (Mo. banc 2017)(quoting Lopez-Matias v. State, 504 S.W.3d 716, 718 (Mo. banc 2016)). "An act of the legislature carries a strong presumption of constitutionality." St. Louis Cty. v. Prestige Travel, Inc., 344 S.W.3d 708, 712 (Mo. banc 2011)(quoting Missouri Ass'n of Club Executives v. State, 208 S.W.3d 885, 888 (Mo. banc 2006)). "The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitution." Id.; See also Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC, 361 S.W.3d 364, 372 (Mo. banc 2012).

While the Court recognizes it was tedious to quote the numerous and lengthy Challenged Provisions at the beginning of this judgment, the Court also believes it was important for the reader to take note of the plain language as well as the current landscape of abortion regulations in Missouri. In particular, the Court emphasizes Section 188.010 discusses the intent of the general

assembly and Section 188.026 catalogues the findings of the general assembly with respect to abortion.

ii. Historical Practice and Understandings

The First Amendment of the U.S. Constitution was enacted against the backdrop of political and religious turmoil. Everson v. Bd. of Ed. of Ewing Twp., 330 U.S. 1, 8-9 (1947). Early in our history, several colonies had government-sponsored religions. Id. This resulted in citizens being taxed to support religious institutions incompatible with their own beliefs or punished because they refused to participate in public worship. Id. The Framers and the citizens of their time enacted the First Amendment to "protect the integrity of individual conscience in religious matters" and "guard against the civic divisiveness that follows when the government weighs in on one side of religious debate." McCreary Cnty., Ky. v. ACLU of Ky., 545 U.S. 844, 876 (2005). It is safe to assume "Missouri follows generally the usual patterns of religious guaranties and safeguards in its Constitution," but it sometimes goes further, as in the expenditures of public funds in ways that erode the separation of church and state. See Paster v. Tussey, 512 S.W.2d 97, 101 (Mo. banc 1974).

Because of this history, government policies favoring a particular religion or favoring religion over nonreligion have been struck down as unconstitutional. See School District of Abington Township, Pennsylvanie v. Schempp, 374 U.S. 203, 223 (1963) (holding that daily reading and recitation of verses from the Holy Bible at a public elementary school violated the Establishment Clause). At the same time, history demonstrates that "the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious." Van Orden v. Perry, 545 U.S. 677, 699 (2005). In fact, in the same week that

Congress adopted the First Amendment, it also passed legislation approving paid Congressional chaplains. Lynch v. Donnelly, 465 U.S. 668, 674 (1984).

Moreover, it is important to recognize as the Court begins its analysis by reference to historical practices and understandings, that at issue here is abortion, which obviously affects women in different ways than it does men. In particular, one way of looking at a ban on abortion is to say such a ban protects life at its earliest stages. Another way of looking at it is to say such bans deny bodily autonomy to women. As the Court examines historical practices and understandings related to issues surrounding abortion and the Missouri Constitution's Establishment Clauses, it is essential to keep in mind that existing alongside these historical laws is the fact that women did not have right to vote until 1920, the first woman was elected to the Missouri Senate in 1972, and the first woman was appointed to the Missouri Supreme Court in 1988.[7] Thus, while the Court examines how legislatures and courts have dealt with these issues, it is also important to recognize this historical inequality so as not to use historical practices and understandings as methods to continue to subjugate women. The reason the Court is examining historical practices and understandings is to understand what the law has been, but in a case dealing with the Establishment Clauses, it is also important to understand the rationale behind the laws. In other words, was religion the driving force? Was it rather a concern for women's health or the health of a fetus? Was there ever a concern for bodily autonomy as there is today? These are just some of the questions that might be important, and when the Court has a history where women have not had an equal voice, the answers to some of these questions may not be forthcoming. So

[7] Of course, the Court is not suggesting women are of one belief on these issues, but rather just highlighting how historic inequality could influence in this inquiry.

while this inquiry can be instructive, it does not provide a complete picture, and the Court recognizes this.

In Dobbs, the majority opinion defended its analysis of the United States' tradition by looking at laws for more than a century after 1868 "including 'another half-century' after women gain the constitutional right to vote in 1920." Dobbs, 597 U.S. at 261. Some may argue that still does not provide an accurate accounting of tradition, but in the context of that decision, the Court was returning the issue of abortion to legislative bodies and allowing women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Id. at 289. The inquiry here cannot be avoided by such a shift because the Court has to make a decision on a question of law. With that in mind, the Court will turn to an examination of historical practices and understandings.

To begin, the Court notes Missouri has had some form of abortion restriction since 1825, according to Section 188.026.2(3), and even prior to the adoption of the Missouri Constitution, well before women could vote on the matter. The Court recognizes that Mo. Rev. Stat. Art. II, Section 1268 (1879) provided that:

> Every physician or other person, who shall willfully administer to any pregnant woman, any medicine, drug, or substance whatsoever, or shall use or employ any means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment; but if the death of such woman ensue from the means so employed, the person so offending shall be deemed guilty of manslaughter in the second degree.

That provision was essentially unchanged in 1889, 1899, and 1909. Mo. Rev. Stat. Art. II, Section 3495 (1889); Mo. Rev. Stat. Art. II, Section 1853 (1899); Mo. Rev. Stat. Art. II, Section 4459

(1909). However, in 1909, an additional crime was enacted making the death of a "quick child" a second-degree manslaughter. This provision provided:

> Any person who, with intent to produce or promote a miscarriage or abortion, advises, gives, sells or administers to a woman (whether actually pregnant or not), or who, with such intent, procures or causes her to take, any drug, medicine, or article or uses upon her, or advises to or for her the use of, any instrument or other method or device to produce a miscarriage or abortion (unless the same is necessary to preserve her life or that of an unborn child, or if such person is not a duly licensed physician, unless the said act has been advised by a duly licensed physician to be necessary for such a purpose), shall, in the event of the death of said woman, or any quick child, whereof she may be pregnant, being thereby occasioned, upon conviction be adjudged guilty of manslaughter in the second degree, and punished accordingly; and in case no such death ensue, such person shall be guilty of the felony of abortion, and upon conviction be punished by imprisonment in the penitentiary not less than three or more than five years, or by imprisonment in jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and any practitioner of medicine or surgery, upon conviction of any such offense, as is above defined, shall be subject to have his license or authority to practice his profession as physician or surgeon in the state of Missouri revoked by the state board of health in its discretion.

Mo. Rev. Stat. Art II, Section 4458. From 1919 to 1969, this Section was essentially unchanged. Mo. Rev. Stat. Art. II, Section 3239 (1919); Mo. Rev. Stat. Art. II, Section 3991 (1929); Mo. Rev. Stat. Art. II, Section 4385 (1939); Mo. Rev. Stat. 559.100 (1949); Mo. Rev. Stat. 559.100 (1959); Mo. Rev. Stat. 559.100 (1969).

After Roe was decided in 1973, the abortion statutes were rewritten. Notably, at that time, Section 188.010 provided: "[i]t is the intent of the general assembly of the state of Missouri to reasonably regulate abortion in conformance with the decisions of the supreme court of the United States." Mo. Rev. Stat. Cum. Supp. (1975). Other statutes spelled out the trimester approach from Roe. Mo. Rev. Stat. Cum. Supp. (1975) Sections 188.020 and 188.025.

Then, in 1986, Section 188.010 was amended to provide "[i]t is the intention of the general assembly of the state of Missouri to grant the right to life to all humans, born and unborn, and to

regulate abortion to the full extent permitted by the Constitution of the United States, decisions of the United States Supreme Court, and federal statutes. Mo. Rev. Stat. Section 188.010 (1986). Section 1.205 was also enacted in 1986. It states in relevant part, "[t]he general assembly of this state finds that: (1) The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; [and] (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." Further, subsection two provides:

> Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.

In 2019, Section 188.010 was amended to its current form quoted above. Also in 2019, Section 188.017 was enacted, though it was not effective until Roe was overturned. Sections 188.026, 188.038, 188.375 were also enacted in 2019, and Sections 188.027, 188.057, 188.058 were amended.

In addition to the above-detailed statutory developments, caselaw has also dealt with some of these issues. For instance, the term "quick child" used in the older statutes above referred to the Court's discussion of the term in State v. Emerich, 13 Mo. App. 492 (1883), aff'd, 87 Mo. 110 (1885). In Emerich, the Court found "[a]s the child is, in truth, alive from the moment of conception, this quickening [as used in the statute] must be taken to mean that period of pregnancy at which the womb, having become too large to be contained in the pelvis rises into the abdomen, when the woman feels, or imagines that she feels, the movement of the foetus." Id. at 495. Further, in Steggall v. Morris, 258 S.W.2d 577, 578-79 (Mo. banc 1953) the Court based its holding on the

statement that "a child en ventre sa mere is not only regarded as [a] human being, but as such from the moment of conception—which it is in fact."

So there are historical statutes criminalizing abortion. In reading those statutes, it appears initially causing an abortion was a misdemeanor, but if the woman died in the process, it was second-degree manslaughter, which seems to indicate a distinction between a fetus and a person. By 1909, the "quick child" and woman were placed on equal footing such that the death of either in the process of abortion was manslaughter and if there were no death, there was still the felony of abortion. However, the statutes did not offer any protection to a pre-quick child until after Roe when the protections progressed to the point where the legislature was essentially waiting for Roe to be overruled so it could enact legislation offering protections all the way back to conception, which it ultimately did. Caselaw has also occasionally dealt with the questions of when life begins as noted above. It bears noting again that vestiges of women not having the right to vote for the first hundred years of Missouri's statehood have likely played and continue to play a role in how the law has developed.

The next thing to consider is how have Missouri courts traditionally dealt with the Missouri Constitution's Establishment Clauses. Unfortunately, there is not an abundance of helpful precedent here.

In one case, the Missouri Supreme Court found that a form required by statute that contained the words, "so help me God" in the "form of the oath or affirmation" did not violate "the Missouri Constitution, in article I, sections 5 to 7." Oliver v. State Tax Com'n of Missouri, 37 S.W.3d 243, 250 (Mo. banc 2001). The Missouri Supreme Court reasoned that "there is a reference to God but not a requirement that one express or hold a belief in God." Id. at 251. "The statutory

oath certainly offers the acknowledgement of a specific religious belief." Id. "But the statute is neither a requirement nor an exhortation to such belief." Id. Because the statute offers the option to "affirm" rather than to "swear," it is merely an invitation to express a belief in God, but equally an invitation not to express such a belief. Id. at 249.

> State activities and religious beliefs will occasionally intersect, and references to God are found in many of our governmental activities. Rather than being able to cleanse our institutions of any religious suggestion or content, or to purge any incidental support that religious adherents might receive on a nondiscriminatory basis, the best that can be achieved in the context of this case is strict neutrality of the state as to those who express a belief in God and those who do not.

Oliver v. State Tax Com'n of Missouri, 37 S.W.3d at 252.

Missouri Courts have also examined and rejected constitutional challenges to Sunday closing laws under the Missouri Constitution. See City of St. Joseph v. Elliott, 47 Mo. App. 418, 423 (Mo. App. 1891)(upholding a Sunday-closing law even though "the object of the law [is] to prevent the desecration of the Sabbath") and State v. Chicago, B. & Q.R. Co., 143 S.W. 785, 785-94 (Mo. banc 1912). In Chicago, B. & Q.R. Co, a railroad was charged with failing to run a train on a Sunday in violation of an ordinance, and the railroad contended the ordinance violated the Missouri Constitution's Establishment Clauses. Id. The Court found the Missouri Sunday closing laws were civil regulations despite the expressly religious language in the provisions. Id. To illustrate the language of these laws, the Court notes Section 90 of the Missouri Revised Statutes from 1825 provided, in relevant part, "*Be it further enacted*, That if any person on the Lord's days, Sabbath or Sunday, shall be found laboring . . .[that person] shall, on conviction, forfeit and pay the sum of one dollar for every offence." The Court found the laws did not violate the Missouri Establishment Clauses, noting though trains were required to run "the employees of the company

voluntarily do the lawful work of running its trains on Sunday, and their rights to worship 'according to the dictates of their own conscience' are in no wise restrained or denied." Id.

Similarly, the United States Supreme Court has found that Sunday closing laws that require the closing of certain businesses on Sundays, a traditional day of worship for Christians, do not constitute an Establishment Clause violation on similar grounds. McGowan v. Maryland, 366 U.S. 420 (1961). The Supreme Court reasoned that "secular justifications have been advanced for making Sunday a day of rest, a day when people may recover from the labors of the week just passed and may physically and mentally prepare for the week's work to come." Id. at 434.

> Sunday Closing Laws, like those before us, have become part and parcel of this great governmental concern wholly apart from their original purposes or connotations. The present purpose and effect of most of them is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals. To say that the States cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and State.

McGowan v. Maryland, 366 U.S. at 445.

The United States Supreme Court has also held "[a]lthough neither a State nor the Federal Government can constitutionally pass laws which aid one religion, aid all religions, or prefer one religion over another, it does not follow that a statute violates the Establishment Clause because it happens to coincide or harmonize with the tenets of some or all religions." Harris v. McRae, 448 U.S. 297, 319 (1980)(quoting McGowan v. Maryland, 366 U.S. 420, 442 (1961)).[8] "That the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government

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[8] While Harris and McGowan seem to rely on factors similar to those in the Lemon test, they are still relevant because of the historical perspective they provide. However, also it bears noting that they are not construing the Missouri Constitution's Establishment Clause.

may not, consistent with the Establishment Clause, enact laws prohibiting larceny." Id. Accordingly, the Supreme Court has noted laws like the Hyde Amendment, which restricted funds for abortion when not medically necessary, were as much a reflection of "traditionalist" values towards abortion as they were an "embodiment of the views of any particular religion" and the mere coincidence did not, without more, constitute an Establishment Clause violation. Id. at 319-20.

> . . . it is equally true that the "Establishment" Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions. In many instances, the Congress or state legislatures conclude that the general welfare of society, wholly apart from any religious considerations, demands such regulation. Thus, for temporal purposes, murder is illegal. And the fact that this agrees with the dictates of the Judaeo-Christian religions while it may disagree with others does not invalidate the regulation. So too with the questions of adultery and polygamy. The same could be said of theft, fraud, etc., because those offenses were also proscribed in the Decalogue.

McGowan v. Maryland, 366 U.S. at 442 (internal citations omitted).

Now that the Court has explored the statutory history of regulations on abortion and some surrounding caselaw as well as caselaw dealing with the Establishment Clauses, the Court will turn its attention to Petitioners' contentions.

iii. Petitioners' Complaints Regarding the Challenged Provisions

With all of the above in mind, the Court will begin its analysis with Section 188.010.[9] This is the only Section that contains what could be termed explicitly religious language. Again, it provides:

[9] The Court notes that the Petition does not clearly state a claim as to Section 188.010. However, giving the allegations in the Petition their broadest possible intendment, the Court is analyzing this provision because it is part of the foundation of Petitioners' claim that the Challenged Provisions violate the Missouri Constitution's Establishment Clauses.

> In recognition that Almighty God is the author of life, that all men and women are "endowed by their Creator with certain unalienable Rights, that among these are Life", and that Article I, Section 2 of the Constitution of Missouri provides that all persons have a natural right to life, it is the intention of the general assembly of the state of Missouri to:
>
> (1) Defend the right to life of all humans, born and unborn;
>
> (2) Declare that the state and all of its political subdivisions are a "sanctuary of life" that protects pregnant women and their unborn children; and
>
> (3) Regulate abortion to the full extent permitted by the Constitution of the United States, decisions of the United States Supreme Court, and federal statutes.

As noted above, the language "Almighty God is the author of life" and the reference to a "Creator" are of recent vintage. Previous to that, there was no overtly religious language. Is the addition of this language problematic for purposes of the Missouri Constitution's Establishment Clauses? The Court thinks the answer is no.

When considering the clause "In recognition that Almighty God is the author of life, that all men and women are 'endowed by their Creator with certain unalienable Rights, that among these are Life,'" which the Court finds to be the only potentially problematic part of this statute from an Establishment Clause perspective, a few things are important to note. First, the language is similar to the language in the Preamble to the Missouri Constitution, which states "We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do establish this Constitution for the better government of the state." Second, part of the language is paraphrased language from the Declaration of Independence, which states ". . . all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life . . .." Third, one of the Missouri Constitution's Establishment Clauses, Article I, Section 5, contains references to "Almighty God." Fourth, the language is

similar to the preamble of Section 1.205, which the United States Supreme Court discussed Webster v. Reproductive Health Services, 492 U.S. 490, 506 (1989). There the United States Supreme Court did not address whether the preamble was constitutional, essentially agreeing with the argument that it was precatory and imposed no substantive restrictions on abortions at that time. The introductory clause at issue here is similar in that it is precatory and does not impose any substantive restrictions. Further, the language in the beginning clause is similar to express religious language included in Sunday Closing laws that were found constitutional in McGowan v. Maryland, 366 U.S. 420 (1961), and State v. Chicago, B. & Q.R. Co., 143 S.W. 785, as well as the express references to God in a form required by statute that were upheld in Oliver v. State Tax Comm'n, 37 S.W.3d 243.[10]

As a result, the Court finds Section 188.010 and its introductory clause do not violate the Missouri Constitution's Establishment Clauses. To find otherwise would call into question whether the Missouri Constitution itself violates its Establishment Clauses, and that cannot be the case. In addition, the cases mentioned indicate the language is permissible.

Next, the Court will turn to the main impetus for this lawsuit, Section 188.017, identified in the Petition as the Total Abortion Ban. As noted previously, it provides, in relevant part:

> 2. Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in

[10] A distinction to be made between Oliver and the Sunday closing law cases and this case is that Oliver and the Sunday closing law cases involve laws that contain escape valves. While the laws require a certain activity that seems religious in nature, each case identifies ways or reasons the religious nature of the requirement can be avoided. In this case, however, the Challenged Provisions, while the Challenged Provisions are applicable to everyone and contain no escape valve, they also do not require any religious activity or belief.

violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection.

3. It shall be an affirmative defense for any person alleged to have violated the provisions of subsection 2 of this section that the person performed or induced an abortion because of a medical emergency. The defendant shall have the burden of persuasion that the defense is more probably true than not.

Section 188.017 and the rest of the remaining Challenged Provisions do not contain any explicit religious language, but do all rest upon Petitioners' foundational complaint, which is that they claim the legislature has determined the answer to the question of when life begins is that life begins at conception, which they claim is a religious determination and is inconsistent with their religious beliefs. The Court notes underlying all of the Challenged Provisions are the definitions of "abortion," "conception," and "unborn child."[11] The Court further notes that not all of the Challenged Provisions explicitly mention when life begins, but Section 1.205 specifically notes "[t]he life of each human being begins at conception" and that the Challenged Provisions are to be interpreted with that in mind. In addition, Section 188.026.2(1) provides: "[a]t conception, a new genetically distinct human being is formed." Thus, when the Challenged Provisions, which are based upon the finding that life begins at conception, were enacted, the Petitioners believe the legislature improperly violated the Establishment Clauses of the Missouri Constitution by enacting

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[11] Section 188.015.1,3,10 provides as used in Chapter 188, the following terms have the following definitions:

"Abortion":

(a) The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's womb; or

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead unborn child;

"Conception", the fertilization of the ovum of a female by a sperm of a male;

"Unborn Child", the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus[.]

as Missouri law a statutory scheme specific to certain religions that is directly contradictory to the beliefs, teachings, and precepts of other faiths.

Thus, the remaining question before the Court is does the determination in the Challenged Provisions that life begins at conception constitute an establishment of religion under the Missouri Constitution?

Petitioners allege in their Petition "[t]he Challenged Provisions and their implementing regulations expressly and in practical effect establish in law, implement, and authorize enforcement of particular religious beliefs, interfering with Plaintiffs' freedom of religion and coercing them to adhere to religious requirements of a faith that is not their own," and "[b]y establishing in law and imposing on Missourians a specific religion's beliefs about abortion and about the beginning of life, the Challenged Provisions and their implementing regulations violate . . . the Missouri Constitution."

One thing that is clear is that determination that life begins at conception is a belief. It is certainly sometimes a religious belief as in Burwell. However, is it necessarily and only a religious belief? Some courts have said no. A federal court in Missouri dealing with an alleged violation of the U.S. Constitution's Establishment Clause has noted the statements "that '[t]he life of each human being begins at conception' and that '[a]bortion will terminate the life of a separate, unique, living human being' are not facially religious statements. These beliefs are neither exclusive to nor universally held by adherents to Catholicism or evangelical Christianity." Doe v. Parson, 368 F. Supp. 3d 1345, 1351 (E.D. Mo. 2019), aff'd, 960 F.3d 1115 (8th Cir. 2020). That case was concerned with the requirement that prior to providing a woman with an abortion, certain medical professionals have to deliver to her a booklet prepared by the Missouri Department of Health and

Senior Services that states, in pertinent part, "The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being." Id. at 1348. In finding this did not constitute a violation of the U.S. Constitution's Establishment Clause, the Court noted these tenets neither regulate abortion nor promote religious beliefs. Id. at 1352.

The instant case goes further. Not only are medical professionals required to provide the same booklet as in Doe v. Parson pursuant to Section 188.027.1(2), but women are now prohibited from getting abortions because the legislature has enacted a total abortion ban based on its finding that life begins at conception. Section 188.017. Does that further development transform this into a violation of the Missouri Constitution's Establishment Clauses?

The Court finds this to be an extremely difficult question. In Roe, the majority noted "[w]e need not resolve the difficult questions of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." 410 U.S. at 159. The Court went on to highlight numerous different views regarding when life begins. Id. at 160-62. Similarly, in Dobbs, the majority stated its opinion was not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. 597 U.S. at 263.

The Missouri legislative has determined that life begins at conception. With the overturning of Roe and the subsequent total ban on abortion in Missouri, the legislature's determination has real consequences. To expand upon the Court's discussion in Roe, it is true that various religions, philosophy, medicine, science, and, indeed, law have all posited their own answers to the question of when life begins. In the end though, a judgment about what exactly

amounts to human life is a matter of individual discernment. For some the answer is provided by religion. For others, the answer is provided by some other source or combination of sources. Petitioners have asserted as a fact that the determination that life begins at conception is based on religion. However, the Court believes whether the determination by the legislature that life begins at conception is based on religion, and, in fact, whether such a determination violates the Missouri Constitution's Establishment Clauses is actually a question of law.

As such, considering the historical statutes and caselaw described above, it is evident that abortion has been historically criminalized. It is also clear from history that the state of Missouri has long held an interest in the welfare of the unborn. Again, it cannot be forgotten that the views of women throughout Missouri's two-hundred year history have not been permitted to be expressed as fully as they can be today.

It is further evident, especially by witnessing the evolution of Section 188.010, that the intent of the Missouri legislature has become increasingly couched in religious language. On the other hand, the Missouri legislature has made extremely detailed medical and scientific findings in Section 188.026. These findings focus on society's expanded knowledge of fetal development, including the importance of a heartbeat, brain activity, the ability to feel pain. The legislature also recognizes the importance of international law, treaties, and opinion in its findings. It also talks about the increased danger of abortion performed later in pregnancy. However, notably, in its findings, the legislature does not mention religion.

This Court's review of the history of abortion regulation leaves unanswered whether such regulation grew from religion or other interests. However, given Section 188.010's evolution, it is clear the legislature has used more religious-oriented language very recently. As noted above,

Section 188.026 makes clear that the legislature's interest is also based in medical and scientific findings the legislature has adopted. As the trend of discovery or understanding illuminated in Section 188.026 indicates, as medicine and science progresses, more is understood about the human development and the State of Missouri's long-held interest in the welfare of the unborn has increased.

With respect to Section 188.017, as previously stated, there is no language of a religious nature in this provision. The Court finds that the restrictions in the ban are consistent with Missouri's historical criminalization of and restrictions on abortion. Essentially, the only thing that changed is that Roe was reversed, opening the door to this further regulation. Dobbs, provided in part that the State has an "interest in protecting prenatal life" even "before viability." 597 U.S. at 275. The Total Abortion Ban is consistent with this interest and a result of the holding in Dobbs.

The Court does not accept Petitioners' argument that the determination that human life begins at conception is strictly a religious one. The plain language of the Challenged Provisions stating that life begins at conception do not do so in religious terms. See Sections 1.205, 188.015, 188.026. While the determination that life begins at conception may run counter to some religious beliefs, it is not itself necessarily a religious belief. As such, it does not prevent all men and women from worshipping Almighty God or not worshipping according to the dictates of their own consciences; it does not control or interfere with the rights of conscience; it does not establish any official religion, it does not infringe a citizen's right to pray or express his or her religious beliefs; it does not coerce any person to participate in any prayer or other religious activity; it does not compel anyone to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; and

it does not require any money to ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; nor does it require any preference be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship. The United States Supreme Court has noted "[w]hile individuals are certainly free *to think* and *to say* what they wish about "existence," "meaning," the "universe," and "the mystery of life," they are not always free *to act* in accordance with those thoughts." Dobbs, 597 U.S. at 255-56. As a result, the Court finds State Respondents have shown that they are entitled to judgment on the pleadings in that Section 188.017 does not violate Article I, Sections 5, 6 or 7 of the Missouri Constitution.

Regarding Section 188.021, identified as the Medication Abortion Restrictions, in addition to the Court's findings on Section 188.017, which are also applicable here, the Court finds that the restrictions in the ban are consistent with Missouri's historical criminalization of and restrictions to abortion. Moreover, with respect to Section 188.021.2 of the Medication Abortion Restrictions, the statute states a purpose "to ensure the safety of any patient suffering complications as a result of the administration of the drug or chemical in question." The Medication Abortion Restrictions are consistent with this interest. State Respondents have shown that they are entitled to judgment on the pleadings that Section 188.021 does not violate Article I, Sections 5, 6, or 7 of the Missouri Constitution.

Regarding Section 188.075, identified in the Petition as the Concurrent Original Jurisdiction Provision, as well as Sections 188.038.4, 188.065, 197.220, 197.230, and 558.011, the Court finds that these statutes relate to compliance with, reporting as to and/or consequences for the violation of statutes restricting abortion. These statutes do not themselves restrict abortion.

Petitioners' arguments regarding the constitutionality of these statutes are premised on a finding that other statutes are unconstitutional. Following this Court's dismissal of certain claims in its ruling on State Respondents' motion to dismiss, as well as the instant rulings granting State Respondents' motion for judgment on the pleadings as to Sections 188.010, 188.017, and 188.021 above, the Court must grant to judgment on the pleadings in State Respondents favor on Sections 188.026, 188.075, 188.038.4, 188.065, 197.220, 197.230, and 558.011.

Regarding Section 188.052, which requires reporting of post-abortion care, the Court finds that the requirements are consistent with Missouri's historical regulation of abortion. State Respondents have shown that they are entitled to judgment on the pleadings that Section 188.052 does not violate Article I, Sections 5, 6, or 7 of the Missouri Constitution.

iv. Canon of Constitutional Avoidance

Finally, State Respondents argue that the canon of constitutional avoidance favors rejecting the Petition. "If a constitutional provision can be interpreted in different ways, one constitutional and the other unconstitutional, the constitutional construction shall be adopted." Johnson v. State, 366 S.W.3d 11, 26 (Mo. banc 2012). "It is a well accepted canon of statutory construction that if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended." Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822, 838-39 (Mo. banc 1991).

The Court agrees with State Respondents that the canon of constitutional avoidance is a canon of statutory construction recognized in Missouri. To the extent that State Respondents argue this canon is an independent reason for granting their motion for judgment on the pleadings, the

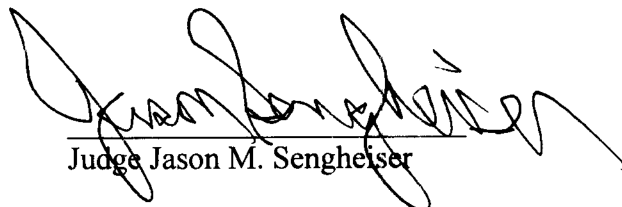
Court disagrees. The Court believes that a full analysis, as conducted above, is necessary in order to determine whether the statutes at issue violate Article I, Sections 5, 6, or 7 of the Missouri Constitution. See Doe v. Parson, 567 S.W.3d 625, 632 (Mo. banc 2019); Saint Louis University v. Masonic Temple Associationn of St. Louis, 220 S.W.3d 721, 728 (Mo. banc 2007). However, the Court finds that the canon of constitutional avoidance is an additional, but not necessarily independent, reason to find in State Respondents' favor.

JUDGMENT

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Respondents the State of Missouri, Missouri Governor Mike Parson, Missouri Attorney General Andrew Bailey, Marc Taormina and the other officers and members of the Missouri State Board of Registration for the Healing Arts, and Paula F. Nickelson—Acting Director of the Missouri Department of Health and Senior Services' Motion for Judgment on the Pleadings is hereby GRANTED.

Judgment on the pleadings is hereby entered in favor of the movant State Respondents on all Counts of Petitioners' First Amended Petition.

SO ORDERED:



Judge Jason M. Sengheiser

Dated: June 14, 2024