THE CIRCUIT COURT OF ST. LOUIS CITY
TWENTY-SECOND JUDICIAL CIRCUIT OF MISSOURI

THE STATE OF MISSOURI ex rel. ERIC S. SCHMITT; *Plaintiff*, v. THE CITY OF ST. LOUIS; ADAM L. LAYNE, TREASURER OF ST. LOUIS CITY; DARLENE GREEN, COMPTROLLER OF ST. LOUIS CITY; and DR. MATI HLATSHWAYO DAVIS, DIRECTOR OF HEALTH OF ST. LOUIS CITY, *Defendants*.	Case No. 2222-CC08920

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Missouri General Assembly has long prohibited the use of taxpayer-funded resources to support abortion. In particular, sections 188.205, 188.210, and 188.215 of the Missouri Revised Statutes, enacted in 1986, prohibit cities from using public funds, public employees, and public facilities to support, encourage, or assist abortions. Other provisions of the Missouri Revised Statutes establish Missouri's fundamental policies of defending the lives of the unborn and protecting the right to life. Notwithstanding these provisions, the City of St. Louis ("City") enacted Board Bill 61 ("BB61") to use public funds, employees, and facilities to provide "logistical support" for abortions and to encourage and assist abortions, in direct contravention of Missouri law. This Court should enjoin the City from implementing that unlawful ordinance.

LEGAL AND FACTUAL BACKGROUND

Missouri has authority to regulate abortion "in accordance with the view of its citizens." *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. __ (2022), slip op. at 9. Missouri has often enacted laws advancing its fundamental policy that unborn children have a right to life and abortion should be minimized in Missouri. In particular, in 1986, the General Assembly passed House Bill 1596. H.B. 1596, 83rd Gen. Assembly, 2d Reg. Sess. (Mo. 1986). HB 1596 prohibits the use of public funds, public employees, and/or public facilities to perform or assist abortions or to encourage or counsel a woman to have an abortion not necessary to save her life. §§ 188.205, 188.210, 188.215, RSMo. HB 1596 also enacted Section 1.205, RSMo. Section 1.205.1 provides that "[t]he life of each human being begins at conception," and that "[u]nborn children have protectable interests in life, health, and well-being." § 1.205.1(1)-(2), RSMo. Section 1.205.2 provides that "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." § 1.205.2, RSMo.

In 2019, the General Assembly passed House Bill 126 ("HB 126"). HB 126 contains the Right to Life of the Unborn Child Act (the "Act"), which prohibits performing or inducing abortions except in cases of medical emergency, with a contingent effective date. § 188.017.2. HB 126 also enacted § 188.010, RSMo, which reaffirms 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…." § 188.010, RSMo. In light of these principles, the General Assembly declared that it is Missouri's fundamental policy to "[d]efend the right to life of all humans, born and unborn;" and "[d]eclare that the state and *all of its political subdivisions* are a 'sanctuary of life' that protects pregnant women and their unborn children." *Id.* (emphasis added).

On June 24, 2022, the U.S. Supreme Court decided *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 597 U.S. __ (2022). *Dobbs* overruled the right to abortion recognized in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. *Dobbs*, Slip op., at 5. The Court stated: "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives…. That is what the Constitution and the rule of law demand." *Id.* at 6.

Soon after the *Dobbs* decision, the City's Board of Aldermen voted to pass Board Bill 61 ("BB 61") on July 15, 2022. On July 21, 2022, the City's Mayor, Tishaura Jones, signed BB 61. Under BB 61, the City will take $1.5 million from the Coronavirus Local Fiscal Recovery Fund and place it into a Reproductive Equity Fund ("Fund"). Ex. D at 2-4. One million dollars of the Fund will provide "logistical support" for abortion, such as "childcare, transportation, and other logistical support needs." *Id*. at 4. This $1 million is specifically earmarked for "logistical

support" for abortion. The Fund also allocates an additional $500,000 for "community needs." *Id.* This amorphous category "will support infrastructure and operations for organizations already providing direct services to support *reproductive healthcare access* in the region …." *Id.* (emphasis added). Further, BB 61 allocates $250,000 of ARPA funds for "administrative oversight and evaluation" of the Reproductive Equity Fund. *Id.* § 3. BB 61 thus explicitly provides that public funds, public employees, and public facilities will be used to encourage abortion and assist women in obtaining abortions. It is plainly illegal under Sections 188.205, 188.210, and 188.215 of Missouri's Revised Statutes.

ANALYSIS

Missouri Supreme Court Rule 92.02 governs the issuance of preliminary injunctions. A preliminary injunction "merely seek[s] to maintain the status quo between the parties." *Salau v. Deaton*, 433 S.W.3d 449, 453 (Mo. App. 2014) (quoting *Pomirko v. Sayad*, 693 S.W.2d 323, 324 (Mo. App. 1985)); *see also State v. Am. Ins. Co.*, 173 S.W.2d 51, 53 (Mo. 1943) ("[T]he purpose of a temporary injunction is to preserve the subject matter of the controversy in its then condition"). A preliminary injunction should be granted when "the probability of success on the merits and irreparable harm decidedly outweigh any potential harm to the other party or to the public interest." *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 840 (Mo. banc 1996). When considering whether to provide preliminary injunctive relief, Missouri courts "should weigh '[1] the movant's probability of success on the merits, [2] the threat of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and [4] the public interest.'" *Gabbert*, 925 S.W.2d at 839 (quotation omitted). "The likelihood of success on the merits is '[t]he most important of the[se] factors.'" *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020) (per curiam) (quoting *Shrink Mo.*

Gov't PAC v. Adams, 151 F.3d 763, 764 (8th Cir. 1998)). Here, all four factors favor the State, and the Court should issue a preliminary injunction.

I. The first and most important preliminary-injunction factor—probability of success—favors Missouri.

The first preliminary injunction factor, probability of success, favors Missouri because Missouri is likely to succeed in establishing that the City is violating sections 188.205 and 188.210, and 188.215, RSMo.

a. Using public funds to encourage or assist abortion violates § 188.205.

The City violates § 188.205 when it provides public funds to assist women to obtain abortions. That section prohibits public funds from being expended "for the purpose of … assisting an abortion, not necessary to save the life of the mother, or for the purpose of encouraging … a woman to have an abortion not necessary to save her life." § 188.205. It thus prohibits the use of public funds to "encourage" or "assist" abortion. *Id.* The statute defines public funds as "any funds received or controlled by this state or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers." § 188.200.

BB 61 violates the plain meaning of this statute. Neither section 188.205 nor chapter 188 defines the terms "assisting" or "encouraging." "When a term is not defined by statute, [courts] will give the term its 'plain and ordinary meaning as derived from the dictionary.'" *Hegger v. Valley Farm Diary Co.*, 596 S.W.3d 128, 131–32 (Mo. banc 2020) (citation omitted). "If the language of a statute is plain and unambiguous, this Court is bound to apply that language as written and may not resort to canons of construction to arrive at a different result." *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 605 (Mo. banc 2019). "Assist" is a broad term meaning "to give *support* or aid." *Assist*, Webster's Third New International Dictionary 132 (2002) (emphasis

added). To "support" includes to "actively promote the interests or cause of" and to "argue in favor of." *Support*, Webster's Third New International Dictionary (2002).

Here, the City violates section 188.205 by allocating funds from its American Rescue Plan Act ("ARPA") federal grant to the Reproductive Equity Fund. Because ARPA Funds are public funds, section 188.205 governs how the City may lawfully use them. Section 188.205 instructs the City not to use public funds for the purpose of assisting abortions. But through BB 61, the City has allocated $1 million to provide "logistical *support*" for abortions. Ex. D at 4 (emphasis added). As noted above, to "assist" is to "*support* or give aid." Webster's Third, at 132. Thus, to provide "logistical *support*" for abortion is to "assist" abortion, under the plain meaning of § 188.205.

BB 61 has also allocated an additional $500,000 to "support infrastructure and operations for organizations already providing direct services to support *reproductive healthcare access*." *Id.* at 5 (emphasis added). BB 61's monetary support for abortion in § 1 expressly directs the City to provide monetary assistance for abortions by funding women on the basis that they seek or have sought abortions. BB 61's monetary support for "infrastructure and operations for organizations already providing direct services to support reproductive healthcare access in the region including access to doulas and lactation support" encompasses monetary assistance for abortions or logistical support for abortions. The phrase "reproductive healthcare access" is undoubtedly a euphemism for abortion. And, for similar reasons, BB 61's allocation of $250,000 to provide "administrative oversight" for the City's actions in encouraging and assisting abortion likewise violates the plain meaning of the statute.

BB 61 also violates § 188.205 because it uses public funds to "encourage" abortion. To "encourage" means "to spur on: stimulate" or "to give help or patronage to: foster." *Encourage*,

Webster's Third New International Dictionary 747 (2002). Providing "logistical support" for abortion, including "the funding of childcare, transportation, and other logistical support needs," Pet. Ex. D § 1, unquestionably constitutes a manner of "spurring on" or "stimulating" abortion, "giving help or patronage to" abortion, and "fostering" abortion. *See id.* Likewise, to spend public funds to "support infrastructure and operations for organizations already providing direct services to support *reproductive healthcare access*," constitutes "encouraging" abortion, where "reproductive healthcare access" includes abortion (as BB 61 evidently contemplates). Using $250,000 to provide administrative oversight and support for these unlawful activities is unlawful for the same reasons. Thus, BB 61 is unlawful on this ground as well, and its implementation should be enjoined.

b. Using public employees to assist abortion violates Section 188.210.

The City also violates section 188.210 by using public employees, acting within the scope of public employment, to negotiate contracts to provide abortion-related services and take other actions to assist abortion under BB 61. Under section 188.210, "It shall be unlawful for any public employee within the scope of his employment to … assist an abortion, not necessary to save the life of the mother." Section 188.210 also prohibits "a doctor, nurse or other healthcare personnel ... who is a public employee within the scope of his public employment to encourage … a woman to have an abortion not necessary to save her life." A "public employee" is defined as "any person employed by this state or any agency or political subdivision thereof." § 188.200(1).

BB 61 violates section 188.210's prohibition against public employees assisting abortion because it authorizes and directs City employees to do so. For instance, BB 61 authorizes the City's Director of the Department of Health "to make, negotiate, and execute" contracts to support abortion-related services. Ex. D at 4. Additionally, the City's Comptroller is "directed to issue warrants upon the City Treasury for payment" of those contracts. *Id.* Both are public employees,

and their actions are part of the City's system for expending public funds to support abortions for City residents. Their actions to negotiate, to execute, and to pay for these services violates section 188.210 by assisting and supporting abortions.

In addition, because the Director of the Department of Health is also a medical doctor, she is prohibited from "encourag[ing] . . . a woman to have an abortion not necessary to save her life." § 188.210. As noted above, to "encourage" means "to spur on: stimulate" or "to give help or patronage to: foster." *Encourage*, Webster's Third New International Dictionary 747 (2002). By making, negotiating, and executing contracts to support abortion-related services and subsidizing abortion-related childcare, travel, and other expenses—and taking other actions to implement the "Reproductive Equity Fund"—the Director of the Department of Health will necessarily "encourage" women to have elective abortions. Indeed, BB 61 provides far fewer funds that *could be used* for pregnancy-related healthcare expenses than funds that *must be spent* assisting women to seek abortions. *Compare* Petition Exhibit C, BB 61, § 1 *with id*. § 2. BB 61's "encouragement" of abortion is very clear.

BB 61's language directing public employees to negotiate with entities to provide abortion-enabling services also violates section 188.205 because those public employees are "assisting" abortions by "actively promot[ing] the interests or cause of" women who seek them and "argu[ing] in favor of" providing them. *Support*, Webster's Third, at 132.

c. Using public facilities to encourage or assist abortion violates Section 188.215.

For similar reasons, BB 61 violates § 188.215 because it provides for public facilities to be used for purpose of assisting and encouraging abortion. Section 188.215 provides: "It shall be unlawful for any public facility to be used for the purpose of performing or assisting an abortion not necessary to save the life of the mother or for the purpose of encouraging or counseling a

woman to have an abortion not necessary to save her life." § 188.215, RSMo. The statute defines "public facility" to mean "any public institution, public facility, public equipment, or any physical asset owned, leased, or controlled by this state or any agency or political subdivisions thereof." § 188.200(2), RSMo. The City will necessarily implement BB 61 by using City-owned computers, buildings, bank accounts, and other assets. All of these are "public facilities" under the statutory definition. *Id.* Accordingly, BB 61 runs afoul of § 188.215, as well.

d. The statutory context confirms that BB61 is manifestly unlawful.

Even if more confirmation were needed beyond the statutes' plain and unambiguous meaning, the statutory context strongly confirms that BB61 violates the prohibitions in §§ 188.205, 188.210, and 188.215. When it comes to statutory interpretation, the Supreme Court of Missouri has emphasized that "to determine a statute's plain and ordinary meaning, the Court looks to a word's usage in the context of the entire statute." *Gross v. Parson*, 624 S.W.3d 877, 885 (Mo. 2021). Here, the statute's context includes the provisions enacted in HB 1596 and HB 126, which express the State of Missouri's fundamental policy of defending the right to life of the unborn and promoting childbirth. As noted above, section 1.205, enacted in 1986 along with §§ 188.205, 188.210, and 188.215, provides that "[t]he life of each human being begins at conception," that "[u]nborn children have protectable interests in life, health, and well-being," and that "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." § 1.205.1(1)-(2), .2, RSMo. This principle receives further confirmation with the enactment of § 188.010 in 2019, which provides that Missouri shall "[d]efend the right to life of all humans, born and unborn," and "that the state and *all of its political subdivisions* are a 'sanctuary of life' that protects pregnant women and their unborn children." *Id.*

(emphasis added). The prohibitions on taxpayer-funded assistance, support, and encouragement for abortion in §§ 188.205, 188.210, and 188.215 should be interpreted broadly in light of this fundamental policy, stated and reaffirmed across decades in Missouri's duly enacted statutes. Indeed, the City's aggressive attempt to use taxpayer funds and resources to support and encourage abortion is directly at odds with Missouri law, which provides that the City, as a "political subdivision[]," is to be "a 'sanctuary of life' that protects pregnant women and their unborn children." *Id.*

II. The second preliminary injunction factor—threat of irreparable harm—favors Missouri.

The second preliminary injunction factor, threat of irreparable harm, favors Missouri because the City's defiance of State law thwarts the efficacy of duly enacted State policy, and so imposes irreparable harm on Missouri. "Any time" the State is prevented "from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (citing *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977)). When a state cannot effectuate the policies embodied in its laws, it "necessarily suffers the irreparable harm of denying the public interest in the enforcement of its law." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020); *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997).

Missouri, through its General Assembly, has identified its interests in protecting unborn children, pregnant women, and medical professionals. § 188.026.5. Its interests include encouraging childbirth over abortion, respecting all human life from contraception to natural death,

and protecting unborn children from harm. §§ 188.010, 1.205, RSMo. *Id.* The City's ordinance irreparably harms the State's interests by undermining the State's enacted policy.

The State also has a compelling interest in protecting the life of unborn children. Even in *Roe v. Wade*, the U.S. Supreme Court acknowledged that states have "an important and legitimate interest in protecting the potentiality of human life." 410 U.S. 113, 162 (1973), *overruled by Dobbs*, No. 19-1392, 597 U.S. ___. And in *Planned Parenthood of Southeast Pennsylvania v. Casey*, the U.S. Supreme Court acknowledged that the State has an interest in protecting "the health of the woman and the life of the fetus" from the outset of the pregnancy. 505 U.S. 833, 846 (1992), *overruled by Dobbs*, No. 19-1392, 597 U.S. __. *Dobbs* authorizes States like Missouri to advance that interest by all legitimate means at their disposal. Missouri has done so, and the City's ordinance irreparably harms Missouri's legitimate interest in protecting unborn human life by using taxpayer-funded resources to encourage, advocate, support, and assist in taking unborn life.

III. The third and fourth preliminary injunction factors—(3) the balance between the harm to Missouri and the harm to the City and (4) the public interest—favor Missouri.

The third and fourth preliminary-injunction factors favor Missouri because the balance of harms weighs in favor of the State and because the Attorney General is advancing the interests of the public. The third preliminary-injunction factor asks the Court to compare the harm to Missouri if the preliminary injunction does not issue with the harm to the City if it does. This balancing decisively favors the State. The State has an interest in enforcing its laws and protecting unborn life, and failure to procure preliminary injunctive relief means that persons will lose their lives. *See State v. Knapp*, 843 S.W.2d 345, 347–48 (Mo. banc 1992) (unborn children are "persons" under involuntary manslaughter statute). The City has passed local laws that contradict State law and subsidize people for exposing unborn children to imminent, fatal harm. The State's interests in enforcing the law are greater than the City's interest in violating it. In fact, the City has *no*

legitimate interest in enforcing or implementing an illegal or unconstitutional ordinance, so there is nothing on the City's side of the balance here. *See, e.g.*, *Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir.2003) ("[T]he Government does not have an interest in the enforcement of an unconstitutional law." (internal quotation marks omitted)); *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (same).

The fourth preliminary-injunction factor asks the Court to determine whether issuing a preliminary injunction is in the public interest. As duly enacted statutes of the State of Missouri, the provisions of Chapter 188 are themselves a powerful expression of the public interest in Missouri. *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937) (holding that a duly enacted law "is in itself a declaration of public interest and policy"). The Attorney General, not the City, protects the public interest under Missouri's Constitution and laws. *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135 (Mo. banc 2000) ("[I]t is the role of the attorney general to protect the public interest."). That duty, on its own, weighs in favor of an injunction here. Further, the General Assembly intentionally gave the Attorney General the right to protect the public interest when it gave him express statutory authority to enforce chapter 188 and bring this action. § 188.075. Thus, the Attorney General's enforcement of Chapter 188 is in the public interest. *Accord State ex rel. Hutcherson*, 96 S.W.3d 81, 84 (Mo. banc 2003) (citing *German Evangelical St. Marcus Congregation of St. Louis v. Archambault*, 404 S.W.2d 705, 706 (Mo. 1966)). There is no public interest in allowing the City to violate lawful statutes passed by the General Assembly.

CONCLUSION

Missouri respectfully requests that this Court issue a preliminary injunction to enjoin the City from implementing Sections 1, 2, and 3 of BB 61, and from taking any action that involves

the use of public funds, public employees, and/or public facilities to support, encourage, or assist abortions.

Dated: July 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 21, 2022, a true and correct copy of the foregoing was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case, and that a true and correct copy was also served by electronic mail and first-class mail upon counsel for Defendants.

/s/ D. John Sauer