

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

THE STATE OF MISSOURI ex rel.
ERIC S. SCHMITT;

Plaintiff,

v.

No.

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.

PETITION

1. This case challenges the City of St. Louis’s recently enacted Board Bill 61, which violates State law by using taxpayer-funded resources to support, encourage, and assist out-of-state abortions.

2. Missouri law has long prohibited the use of public funds, public employees, and public facilities to support, encourage, or assist abortion.

3. Section 188.205, RSMo, provides that “[i]t shall be unlawful for any public funds to be expended for the purpose of ... assisting an abortion ... or for the purpose of encouraging ... a woman to have an abortion not necessary to save her life.”

4. Section 188.210, RSMo, provides that “[i]t shall be unlawful for any public employee within the scope of his employment to ... assist an abortion,” or for a healthcare worker

“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.”

5. Section 188.215, RSMo, provides that “[i]t shall be unlawful for any public facility to be used 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.”

6. Missouri law defines “public funds” broadly to include “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(3), RSMo. It defines “public employee” to include “any person employed by this state or any agency or political subdivision thereof.” § 188.200(1), RSMo. And it defines “public facility” to include “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.

7. On June 24, 2022, the Supreme Court of the United States handed down its opinion in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 597 U.S. __ (2022). *Dobbs* held “that the Constitution does not confer a right to abortion.” *Id.*, slip op. at 69. As a result, “the authority to regulate abortion” has “returned to the people and their elective representatives.” *Id.*

8. In May 2019, the Missouri General Assembly passed House Bill 126 (“HB 126”) (*see* Exhibit A) with supermajorities in both chambers. The Senate voted in favor of the bill 24-10. The House of Representatives approved the bill by a vote of 110-44, with an additional vote on an emergency clause approved by a vote of 109-46.

9. In HB 126, the General Assembly reiterated “that all men and women are endowed by their Creator with certain unalienable Rights, that among these are Life” § 188.010, RSMo.

Accordingly, the General Assembly declared “that the state and *all of its political subdivisions* are a ‘sanctuary of life’ that protects pregnant women and their unborn children.” § 188.010, RSMo (emphasis added).

10. In short, Missouri recognizes that unborn children are fully entitled to the right to life. The State and “all of its political subdivisions,” *id.*, are to abide by this fundamental policy.

11. That position is consistent with previously passed Missouri statutes. For example, § 1.205, RSMo, passed in 1986, provides that: “[t]he life of each human being begins at conception,” § 1.205.1(1); “[u]nborn children have protectable interests in life, health, and well-being,” § 1.205.1(2); and (3) “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.

12. In 1986, consistent with Missouri’s fundamental policy favoring the right to life of the unborn, Missouri passed House Bill 1596, which prohibits using public resources for the purpose of supporting or assisting abortion.

13. HB 1596 provides: “It shall be unlawful for any public funds to be expended 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.” § 188.205. As noted above, HB 1596 includes similar prohibitions against the use of public employees and public facilities to support, encourage, or assist abortion. §§ 188.210, 188.215.

14. The attorney general has “concurrent original jurisdiction throughout the state ... to commence actions for a violation of any provision” of Chapter 188. § 188.075. He also “may seek injunctive or other relief against any person who, or entity which, is in violation of any

provisions 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.” *Id.* (emphasis added).

15. This action is necessary because Defendant City of St. Louis (the “City”), by enacting Board Bill 61 to create a “Reproductive Equity Fund” to provide taxpayer-funded “logistical support” for abortion, has chosen to use public funds and resources illegally to support, encourage, and assist abortion, in violation of §§ 188.205, 188.210, 188.215, RSMo.

Jurisdiction and Venue

16. This Court has jurisdiction under Mo. Const. art V, § 14(a), § 527.010, RSMo, *et seq.*, § 536.150, RSMo, and other applicable law.

17. Venue is proper in this Court under section 508.060, RSMo.

Parties

18. Plaintiff State of Missouri is a sovereign State of the United States of America.

19. Eric S. Schmitt is the 43rd Attorney General of the State of Missouri. Attorney General Schmitt is authorized to “institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state’s interests are involved.” § 27.060, RSMo.

20. Attorney General Schmitt sues to vindicate Missouri’s sovereign interest in controlling the exercise of sovereign power over individuals and entities within its borders; Missouri’s sovereign interest in ensuring the enforcement of Missouri law within Missouri’s

borders; and Missouri's quasi-sovereign and *parens patriae* interest in the freedom, health, and physical, psychological, educational, and economic well-being of a significant segment of persons within its borders.

21. This interest includes, but is not limited to, protecting Missouri citizens' health and welfare from arbitrary, capricious, unreasonable, unlawful, and ultimately harmful policies. This includes policies that deprive Missourians, including unborn Missourians, of their fundamental right to life.

22. Attorney General Schmitt sues to vindicate Missouri's sovereign interest in ensuring that its political subdivisions do not act *ultra vires* or exercise authority vested in them under state law in a fashion that violates the Missouri Constitution or Missouri law.

23. As noted above, state law explicitly vests Attorney General Schmitt with authority to sue to prevent violations of Chapter 188, including the provisions that prohibit the public funding of abortion: "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." § 188.075.3, RSMo.

24. Attorney General Schmitt sues to protect unborn children's right to life by commencing actions for violations of Chapter 188. § 188.075.3.

25. Defendant The City of St. Louis (“City”) is a charter city of Missouri.

26. Because the City operates under a constitutional charter, it is a political subdivision of Missouri, and thus it should be a “sanctuary of life” for the unborn under Missouri law.

27. Adam L. Layne is the Treasurer of the City.

28. Darlene Green is the Comptroller of the City. On information and belief, she is responsible for the receipt and disbursement of American Rescue Plan Act (“ARPA”) funds by and for the City.

29. Dr. Mati Hlatshwayo is the Director of Health for the City. She is a medical doctor and leads the City’s Department of Health.

Factual Allegations

30. On May 24, 2019, Governor Michael Parson signed HB 126 into law.

31. HB 126 contained several distinct sections, each of which advances Missouri’s interest and obligation to protect every human being’s inherent right to life.

32. HB 126 expressly identified the General Assembly’s interest in encouraging childbirth over abortion. § 188.026.5.

33. After the Governor signed the bill, most of the provisions went into effect on August 28, 2019. *See* Mo. Const. art. III, § 29.

34. The General Assembly also enacted the Right to Life of the Unborn Child Act (“Act”), § 188.017, RSMo, with a contingent effective date.

35. Shortly after the U.S. Supreme Court’s issuance of *Dobbs*, Missouri Attorney General Eric S. Schmitt issued an opinion letter informing the Revisor that the *Dobbs* opinion satisfied the first condition of § 188.017.4. Mo. Att’y Gen. Op. 22-2022 (Ex. B).

36. As a result, the Right to Life of the Unborn Child Act (the “Act”) became effective on June 24, 2022.

37. The Act mandates that “no abortion shall be performed or induced upon a woman, except in cases of medical emergency.” § 188.017, RSMo.

38. Notwithstanding these provisions, the City passed Resolution Number 141 on December 10, 2021, declaring its intention to violate State law after *Roe v. Wade* was overruled. Ex. C, Resolution No. 141. Resolution 141 declared that the City is a “safe zone” for abortion. *Id.*

39. On July 15, 2022, the City’s Board of Aldermen voted to pass Board Bill 61 (“BB61”), which purported to establish a “Reproductive Equity Fund.” Ex. D, p.4.

40. The Mayor signed Board Bill 61 on July 21, 2022.

41. BB61 funds the Reproductive Equity Fund with \$1.5 million in ARPA funds. Ex. D, BB61 §§ 1-2, pp.4–5. It also provides \$250,000 in ARPA funds for “administrative oversight and evaluation” of the Reproductive Equity Fund. *Id.* § 3.

42. Of that \$1.5 million, \$1 million in the Reproductive Equity Fund “provide[s] access to abortion through logistical support including but not limited to the funding of childcare, transportation, and other logistical support needs.” *Id.* § 1.

43. BB61 authorizes the City’s Director of the Department of Health to “make, negotiate, and execute any and all contracts or other documents on behalf of the City to expend such funds.” *Id.*

44. BB61 directs the City Comptroller to “issue warrants upon the City Treasury for payment of all expenditures authorized” under the Reproductive Equity Fund’s purposes. *Id.*

45. The other \$500,000 of the Reproductive Equity Fund “provide[s] direct services to support reproductive healthcare access in the region....” *Id.* at § 2, p.5.

46. Though this section permits funds to be used for doula and lactation support, it does not limit use of the funds to those services. Rather, it allows funds to “provide[] direct services to *reproductive healthcare access* in the region.” *Id.* On information and belief, “reproductive healthcare access” includes supporting, encouraging, and assisting abortions. There is no provision in BB61 § 2 prohibiting the Reproductive Equity Fund from funding abortions or otherwise using funding or aiding women to receive an abortion.

47. In addition, BB61 appropriates \$250,000 “to provide administrative oversight and evaluation for the Reproductive Equity Program and Fund.” *Id.* § 3, p.5. Using these public funds, “[t]he Director of the Department of Health is authorized to make, negotiate, and execute any and all contracts or other documents on behalf of the City to expend such funds...” *Id.* Further, “[t]he Comptroller is authorized and directed to issue warrants upon the City Treasury for payment of all expenditures authorized in this Section...” *Id.*

48. BB61 contains an emergency clause stating that it “shall become effective immediately upon its passage and approval by the Mayor.” *Id.* § 7, p.6.

49. As a result, the City has dedicated at least \$1.25 million, and up to \$1.75 million, to assist and encourage pregnant women to seek and receive abortions.

Count I: Unlawful Use of Public Funds

50. All prior allegations are incorporated by reference as if fully alleged herein.

51. In Missouri, it is “unlawful for any public funds to be expended 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.” § 188.205.

52. “Assist” means “to give support or aid.” *Assist*, Webster’s Third New International Dictionary 132 (2002). Providing “logistical support” for abortion, including “the funding of childcare, transportation, and other logistical support needs,” Ex. D § 1, constitutes a form of “giving support or aid” to abortion.

53. “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,” as provided in BB61, Ex. D § 1, constitutes a form of spurring on or stimulating abortion, giving help or patronage to abortion, and fostering abortion.

54. “Public funds” include any funds received or controlled by Missouri, its agencies, or political subdivisions. It also includes funds derived from federal, state, or local taxes, gifts, grants, or payments. § 188.200.

55. The City is using public funds to pay for abortion-related logistical support, including childcare and travel expenses.

56. The City intends to assist abortions by providing women the means to travel to obtain an abortion.

57. The City’s use of public funds, public employees, and public facilities to encourage and assist abortion violates the Missouri General Assembly’s determination “that the state and all of its political subdivisions are a ‘sanctuary of life’ that protects pregnant women and their unborn children.” § 188.010(2), RSMo. The City is a “political subdivision” of the State, and thus it is a “sanctuary of life” that “protects pregnant women and their unborn children” under state law. *Id.* The City’s obligations under Sections 188.205, .210, and .215 must be read in light of this recent enactment of the General Assembly in 2019. The City’s attempt to encourage and assist abortion

through taxpayer-funded “logistical support” for abortion is fundamentally at odds with the City’s duty under State law to serve as a “sanctuary of life,” including for “unborn children.” *Id.*

58. As a result, the City violates § 188.205 by expending public funds for the purpose of assisting or encouraging an abortion.

Count II: Unlawful Activity by Public Employees

59. All prior allegations are incorporated by reference as if fully alleged herein.

60. Any person employed by Missouri, its agencies, or its political subdivisions is a public employee. § 188.200.

61. Section 188.210 of the Missouri Revised Statutes makes it “unlawful for any public employee within the scope of his [or her] employment to . . . assist an abortion, not necessary to save the life of the mother.”

62. Section 188.210 also makes it unlawful for any public-employee doctors, nurses or other health care personnel, social workers, counselors, or persons of similar occupation, acting within the scope of public employment, to encourage elective abortion.

63. BB61 requires City employees in its Department of Health to create and manage the Reproductive Equity Fund. In managing that fund, public employees will be assisting or encouraging abortion by processing claims for public funds to cover costs incurred in obtaining abortions.

64. BB61 requires the City Comptroller to “issue warrants upon the City Treasury for payment of all expenditures” for logistical abortion support. In doing so, public employees employed by the City will be assisting or encouraging abortions by providing money for incidentals related to them.

65. BB61 requires the City Treasurer to pay expenditures for logistical abortion support requested by the City Comptroller. In doing so, public employees employed by the City will be assisting or encouraging abortions by providing money for incidentals related to them.

66. The City's Medical Director is a "doctor," and thus she is a "public employee" who is forbidden by § 188.210 "to encourage ... a woman to have an abortion not necessary to save her life" when acting in the scope of public employment. § 188.210. By her participation in the implementation of BB61, she violates this statute.

67. The City's use of public funds, public employees, and public facilities to encourage and assist abortion violates the Missouri General Assembly's determination "that the state and all of its political subdivisions are a 'sanctuary of life' that protects pregnant women and their unborn children." § 188.010(2), RSMo. The City is a "political subdivision" of the State, and thus it is a "sanctuary of life" that "protects pregnant women and their unborn children" under state law. *Id.* The City's obligations under Sections 188.205, .210, and .215 must be read in light of this recent enactment of the General Assembly in 2019. The City's attempt to encourage and assist abortion through taxpayer-funded "logistical support" for abortion is fundamentally at odds with the City's duty under state law to serve as a "sanctuary of life," including of "unborn children." *Id.*

Count III: Unlawful Use of Public Facilities

68. All prior allegations are incorporated by reference as if fully alleged here.

69. Section 188.215 of the Missouri Revised Statutes prohibits public facilities from being "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."

70. The statute defines “public facilities” broadly to include “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(3), RSMo. The City’s facilities, equipment, and assets are all “public facilities.”

71. The City uses public facilities when it receives and processes claims for reimbursement of costs incurred in obtaining an abortion through programs created as a result of BB61.

72. The City uses public facilities when it provides funding for programs that fund abortions or assistance to women to procure abortions under BB61.

73. The City’s use of public funds, public employees, and public facilities to encourage and assist abortion violates the Missouri General Assembly’s determination “that the state and all of its political subdivisions are a ‘sanctuary of life’ that protects pregnant women and their unborn children.” § 188.010(2), RSMo. The City is a “political subdivision” of the State, and thus it is a “sanctuary of life” that “protects pregnant women and their unborn children” under state law. *Id.* The City’s obligations under Sections 188.205, .210, and .215 must be read in light of this recent enactment of the General Assembly in 2019. The City’s attempt to encourage and assist abortion through taxpayer-funded “logistical support” for abortion is fundamentally at odds with the City’s duty under state law to serve as a “sanctuary of life,” including of “unborn children.” *Id.*

74. Accordingly, the City violates Missouri law when it implements BB61.

Count IV: The City’s Policy Is Preempted by State Law

75. All prior allegations are incorporated by reference as if fully alleged here.

76. A constitutional charter city possesses only those powers that the Missouri Constitution confers in article VI, section 19(a). Article VI, section 19(a) states that those powers may be additionally limited by the city's charter or by statute.

77. Thus, State statutes preempt local legislation inconsistent with or conflicting with State law. *Id.*

78. BB61 is inconsistent with and irreconcilably conflicts with Chapter 188 of the Missouri Revised Statutes in that it subsidizes, encourages, and attempts to increase access to abortion rather than protecting pregnant women and their unborn children.

79. The City's use of public funds, public employees, and public facilities to encourage and assist abortion violates the Missouri General Assembly's determination "that the state and all of its political subdivisions are a 'sanctuary of life' that protects pregnant women and their unborn children." § 188.010(2), RSMo. The City is a "political subdivision" of the State, and thus it is a "sanctuary of life" that "protects pregnant women and their unborn children" under state law. *Id.* The City's obligations under Sections 188.205, .210, and .215 must be read in light of this recent enactment of the General Assembly in 2019. The City's attempt to encourage and assist abortion through taxpayer-funded "logistical support" for abortion is fundamentally at odds with the City's duty under state law to serve as a "sanctuary of life," including of "unborn children." *Id.*

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Declare that the City's actions to earmark public funds to provide access to abortion are unconstitutional, unlawful, and/or *ultra vires*;
- b. Declare that BB61 is unconstitutional and unlawful because it fails to account for the impact on unborn children;
- c. Declare that BB61 violates §§ 188.205, 188.210, and 188.215;

- d. Enjoin the City and its officers, employees, and agents from taking any action to carry out any of BB61 §§ 1, 2, and 3, and from taking any action that would provide in any manner for the use of public funds, public employees, public facilities, and/or public resources for abortions or abortion assistance, including any “logistical support” for abortion;
- e. Grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action against the City and its officers, employees, and agents;
- f. Enter a final judgment in Plaintiff’s favor on all Counts in this Petition; and
- g. Grant such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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