



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

June 24, 2022

VIA EMAIL AND HAND DELIVERY

OPINION LETTER NO. 22-2022

To: Revisor of Statutes
State Capitol Building
201 W. Capitol Avenue, Room 117A
Jefferson City, Missouri 65101-1556
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revision@lr.mo.gov

From: Eric S. Schmitt, Attorney General of Missouri

Re: **Immediate Efficacy of Section 188.017, RSMo**

Section 188.017, RSMo, known as the “Right to Life of the Unborn Child Act,” prohibits abortion except in cases of medical emergency. The statute provides:

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.

§ 188.017.2, RSMo. The statute further provides that “[i]t 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.” § 188.017.3, RSMo.

This law was passed with a contingent effective date. Section B of House Bill 126 (2019), which is codified at § 188.017.4, RSMo, provides as follows:

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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:

(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.

§ 188.017.4, RSMo.

By issuing this Attorney General Opinion and providing it directly to you, I hereby provide notification to the Revisor of Statutes, pursuant to § 188.017.4(1), that 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 § 188.017, RSMo, and that as a result, it is reasonably probable that § 188.017 would be upheld by the court as constitutional.

The Supreme Court's then-controlling plurality opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), stated that the "central holding" of *Roe v. Wade*, 410 U.S. 113 (1973), was "that viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions." *Casey*, 505 U.S. at 860. *Casey* described this statement as *Roe's* "central holding," "central principle," and/or "essential holding," at least nine times. *Id.* at 860, 861, 864, 865, 870, 871, 873, 879. *Casey* stated that it was declining to overrule that "central holding" of *Roe v. Wade*. But today, in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (U.S.), the Supreme Court has overruled both *Roe* and *Casey*.

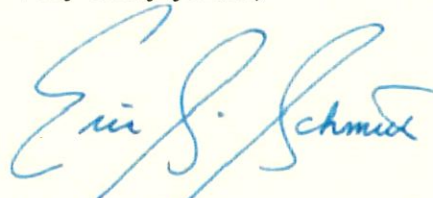
I therefore conclude that "[t]he United States Supreme Court has overruled, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973)," and in doing so, the Supreme Court has "restor[ed] or grant[ed] to the state of Missouri the authority to regulate abortion to the extent set forth in this section." § 188.017.4(1), RSMo. I further conclude that, "as a result, it is reasonably probable that [§ 188.017, RSMo] would be upheld by the [U.S. Supreme Court] as constitutional." *Id.* *Dobbs* has overruled and fatally undermined both *Roe* and *Casey*. There is no jurisprudential basis for any further application of those defunct precedents.

This opinion immediately restores Missouri's deeply rooted history and proud tradition of respecting, protecting, and promoting the life of the unborn. Missouri has been a national leader in the pro-life movement, and this leadership is reflected in its laws. Missouri was among the first States to comprehensively prohibit abortion in 1825, and respect for the life of the unborn has been consistently reflected in its statutes for the past 200 years. Just a few months before *Roe v. Wade* was decided, the Supreme Court of Missouri upheld Missouri's statute prohibiting abortion, and it stated that "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 (Mo. banc 1972). This decision reaffirmed the Supreme Court of Missouri's previous decisions, which had long recognized that "[b]iologically speaking, the life of a human being begins at the moment of conception in the mother's womb," and that "[f]rom the viewpoint of the civil law and the law of property," an unborn child "is not only regarded as human being, but as such from the moment of conception—which it is in fact." *Steggall v. Morris*, 258 S.W.2d 577, 579 (Mo. banc 1953).

Even after *Roe* was decided, Missouri's laws continued to provide the highest possible level of protection to the unborn. Among many other examples, Section 1.205, enacted in 1986, provides 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." § 1.205.1, RSMo. It also 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. Section 188.010, enacted in 2019, provides: "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." § 188.010, RSMo.

Today, the overruling of *Roe* and *Casey* permits Missouri to renew its proud pro-life traditions and restore basic legal protection for the most fundamental of human rights—the right to life.

Very truly yours,

A handwritten signature in blue ink, reading "Eric S. Schmitt". The signature is written in a cursive style with a large initial "E" and "S".

Eric S. Schmitt
Attorney General of Missouri