IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, et al.,	)	
Plaintiffs,	)	
v.	)	**Case No. 2416-CV31931**
	)	**Division 3**
STATE OF MISSOURI, et al.,	)	
Defendants.	)	

ORDER

NOW on this day, the Court takes up the injunctive relief requested in Plaintiffs' Motion for Preliminary Injunction, or, in the Alternative, Temporary Restraining Order, filed on November 6, 2024 and Plaintiffs' Motion for Reconsideration, filed on December 30, 2024. The Court held hearings on these motions and previously entered two Orders granting preliminary injunctive relief. On May 27, 2025, the Missouri Supreme Court issued a peremptory writ directing this Court to vacate its Orders granting preliminary injunctive relief with respect to the enjoinment of the state statutes and regulations identified therein and to reevaluate Plaintiffs' requests for preliminary injunctive relief. The Court, after reviewing the Court's file, in particular, Plaintiffs' Motions for Injunctive Relief and accompanying Suggestions in Support as well as Defendants' Opposition thereto, affidavits,[1] stipulated facts, and oral argument of counsel, and being apprised on the relevant law and having the full record before it, now finds as follows:

[1] Plaintiffs and State Defendants agreed to the submission of affidavits for the purposes of the pre-trial hearings only.

AMENDMENT 3

On November 5, 2024, Missouri voters approved Amendment 3 by majority vote. Election results were certified on December 5, 2024. Amendment 3 is now Article I, Section 36 of the Missouri Constitution. It states as follows:

> Section 36.1. This Section shall be known as "The Right to Reproductive Freedom Initiative."
>
> 2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.
>
> 3. The right to reproductive freedom shall not be **denied, interfered with, delayed, or otherwise restricted** unless the Government demonstrates that such action is justified by a **compelling governmental interest** achieved by the **least restrictive means**. **Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid.** For purposes of this Section, a **governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making**.
>
> 4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.
>
> 5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

> 6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.
>
> 7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.
>
> 8. For purposes of this Section, the following terms mean:
>
> (1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.
>
> (2)"Government",
>
> a. the state of Missouri; or
>
> b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

(emphasis added).

STANDARD FOR PRELIMINARY INJUNCTION

Missouri Supreme Court Rule 92.02 and Chapter 526 of the Missouri Revised Statutes govern injunctive relief where "immediate and irreparable injury, loss, or damage will result in the absence of relief." Mo. Sup. Ct. R. 92.02(1). In *Dataphase*, the United States Court of Appeals for the Eighth Circuit set out to "clarify the standard to be applied . . . in considering requests for preliminary injunctive relief" and held that "whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase Sys. v. C L Sys.,* 640 F.2d 109, 112-14 (8th Cir. 1981).

The Eighth Circuit provided additional clarity regarding the third prong of this test in *Rounds,* holding "a party seeking a preliminary injunction of the implementation of a state statute must demonstrate more than just a 'fair chance' that it will succeed on the merits," characterizing "this more rigorous standard . . . as requiring a showing that the movant 'is likely to prevail on the merits.'" *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731-32 (8th Cir. 2008). The Court further states, "[i]f the party with the burden of proof makes a threshold showing that it is likely to prevail on the merits, the [court] should then proceed to weigh the other *Dataphase* factors." *Id*. at 732.

Thus, this Court will address Plaintiffs' claims for injunctive relief by evaluating (1) the threat of irreparable harm to the moving party; (2) balancing this harm with any injury an injunction would inflict on other interested parties; (3) the moving party is likely to prevail on the merits; and (4) the effect on the public interest.

I. The Threat of Irreparable Harm

"The United States Supreme Court has held being subject to an unconstitutional statute, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). An injunction may issue "to prevent the doing of any legal wrong whatever, whenever in the opinion of the court an adequate remedy cannot be afforded by an action for damages." § 526.030 RSMo.[2] Injunctive relief is unavailable unless irreparable harm is otherwise likely to result, *see City of Grandview v. Moore*, 481 S.W.2d 555, 558 (Mo. App. 1972), and plaintiff has no adequate remedy at law. *See State ex rel. Taylor v. Anderson*, 242 S.W.2d 66, 72 (Mo. 1951). Irreparable harm can also be established if monetary remedies cannot provide adequate compensation for

[2] Unless otherwise indicated, statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated through the 2023 Cumulative Supplement.

improper conduct. *Peabody Holding Co., Inc. v. Costain Grp. PLC*, 813 F. Supp. 1402, 1421 (E.D. Mo. 1993). Movant need not show that damages have accrued, only that there is a threat of irreparable harm absent injunctive relief. *Id*.

The threat of irreparable harm is especially apparent in the context of abortion care, because it is a decision and procedure that "simply cannot be postponed, or it will be made by default with far-reaching consequences." *Bellotti v. Baird,* 443 U.S. 622, 643 (1979). Where the statutes at issue unquestionably conflict with the newly established rights afforded by Amendment 3, because they "den[y], interfer[e] with, dela[y], or otherwise restric[t]" the right to reproductive freedom, or because they discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so, irreparable injury has been established. Mo. Cont. Art. I, §36.3; §36.6

II. Balance of Harm Versus Injury to Other Interested Parties

In order to obtain injunctive relief, movants need only show that the balance of equities tips in their favor. *Peabody Holding Co., Inc. v. Costain Grp. PLC*, 813 F. Supp. 1402, 1422 (E.D. Mo. 1993) (citing *Dataphase Systems Inc.,* 640 F.2d 109, 113-14 (8th Cir. 1981)). The balance-of-harms and public-interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). State Defendants argue that preliminarily enjoining the laws at issue would also impose irreparable harm on the State, whose legislature has democratically enacted these laws. "[A]ny time a State is enjoined by a court 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) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). It is this alleged harm the Court needs to balance against the alleged irreparable harm incurred by Plaintiffs. As Plaintiffs

argue, they and their patients are suffering serious harm, whereas Defendants only stand to lose the ability temporarily to enforce some laws that are likely to be held unconstitutional and which further no valid compelling state interest. *See Kirkeby v. Furness*, 52 F.3d 772, 775 (8th Cir. 1995) (public interest favored injunction against unconstitutional ordinance).

III. Likely to Prevail on the Merits

As discussed above, "a party seeking a preliminary injunction of the implementation of a state statute must demonstrate more than just a 'fair chance' that it will succeed on the merits." *Rounds*, 530 F.3d 724, 731-32 (8th Cir. 2008). The Court characterized "this more rigorous standard . . . as requiring a showing that the movant 'is likely to prevail on the merits.'" *Id.*

"A statute's validity is presumed, and a statute will not be declared unconstitutional unless it clearly contravenes some constitutional provision." *Planned Parenthood of Kan. & Mid-Mo., Inc. v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007) (citing *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006)). However, if a statute conflicts with a constitutional provision, the statute must be declared invalid. *Jackson County v. State*, 207 S.W.3d 608 (Mo. banc 2006). A statute cannot supersede, nor can judicial interpretation thereof, abrogate a constitutional right. *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006); *United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. banc 2004) ("Courts will enforce a statute unless it plainly and palpably affronts fundamental law embodied in the constitution.") "Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning." *Faatz v. Ashcroft*, 685 S.W.3d 388, 400 (Mo. banc 2024) (internal citation omitted).

In light of this guidance, the Court will assess whether Plaintiffs are likely to prevail on the merits by reviewing the language of the challenged statutes through the heightened scrutiny framework provided in the language of Amendment 3, namely, whether the government's

purported compelling interest (one that is "for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making") is achieved by the least restrictive means.

IV. The Public Interest

Amendment 3 was passed by a majority vote on November 5, 2024, the results of which were certified on December 5, 2024. *See* Plaintiffs' Supplement Notice of Authority filed on December 5, 2024. By the language of Amendment 3, the public interest is clear that voters, i.e. the public, intended to create a new fundamental right of reproductive freedom for all Missourians, "which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions." Mo. Const. Art. I, 36.2. It is this public interest that the Court must consider when weighing the factors for preliminary injunction, as provided above.

LEGAL ANALYSIS

For the sake of clarity, the Court will address each category of statutes at issue as they are discussed in the Motion for Preliminary Injunction, as provided below:

1. Missouri's Abortion Bans: The Total Ban, § 188.017 RSMo; Gestational Age Bans, §§ 188.056, 188.057, 188.058, 188.375, RSMo; and Reasons Ban §§ 188.038, 188.052 RSMo.,19 C.S.R. § 10-15.010(1).[3]

a. Total Ban. Section 188.017 provides, in pertinent part, that

> …no abortion shall be performed or induced upon a woman, except in cases of medical emergency…[and a]ny 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

[3] The State Defendants concede the Total Ban and Gestational Age Bans are no longer enforceable and argue that a preliminary injunction on this issue is not needed because there is no controversy. However, Johnson remains as a Defendant and has not conceded the same.

> as subject to suspension or revocation of his or her professional license by his or her professional licensing board…. § 188.017.2 RSMo.

The Court finds the plain language of this statute is directly at odds with Amendment 3, specifically, Art. I, § 36.2 of the Missouri Constitution. Pursuant to Art. I § 36.3, the statute is therefore presumptively invalid and, because the State Defendants have not demonstrated that the statute is justified by a compelling governmental interest achieved by the least restrictive means, this Court finds Plaintiffs are likely to prevail on the merits. Further, because "being subject to an unconstitutional statute, 'for even minimal periods of time, unquestionably constitutes irreparable injury,'" the threat of irreparable harm exists here. The parties do not articulate, and this Court does not find, that issuance of this injunction would inflict harm and injury on other interested parties. The Court also finds that the public interest, as illustrated by the majority who voted to pass Amendment 3, is on the side of granting this injunction. Therefore, the Court finds that Section 188.017 must be enjoined.

b. Gestational Age Bans. Section 188.056 provides, in pertinent part,

> …no abortion shall be performed or induced upon a woman at **eight weeks gestational age** or later, except in cases of medical emergency… [and a]ny 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…. § 188.056.1. RSMo. (emphasis added).

Likewise, Section 188.057 provides, in part,

> …no abortion shall be performed or induced upon a woman at **fourteen weeks gestational age** or later, except in cases of medical emergency… [and a]ny 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…. § 188.057.1. RSMo. (emphasis added).

Section 188.058 provides, in part,

> …no abortion shall be performed or induced upon a woman at **eighteen weeks gestational age** or later, except in cases of medical emergency… [and a]ny 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…. § 188.058.1 RSMo. (emphasis added).

Finally, Section 188.375 provides, in part,

> …no abortion shall be performed or induced upon a woman carrying a late-term pain-capable unborn child [defined in § 188.375.2 as "unborn child at **twenty weeks gestational age** or later"], except in cases of medical emergency… [and a]ny person who knowingly performs or induces an abortion of a late-term pain-capable 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. § 188.375.3 RSMo. (emphasis added).

As with the Total Ban, these statutes are clearly contrary to the language of Amendment 3 in that they infringe on a person's "autonomous decision making" and violate the provision prohibiting the penalization and prosecution of a person based on pregnancy outcomes. Mo. Const. Art. I, §§ 36.3, 36.5. Consistent with this Court's analysis above, the laws are presumptively invalid under Article I, Section 36.3. Because Defendants have not demonstrated a compelling governmental interest achieved by the least restrictive means justifying these statutory provisions, the Court finds that Plaintiffs are likely to prevail on the merits. As set out above, the threat of irreparable harm is apparent here as well. Parties do not articulate, and this Court does not find, that issuance of this injunction would inflict harm and injury on other interested parties. The Court also finds that the public interest, as illustrated by the majority who voted to pass Amendment 3, is on the side of granting this injunction. Therefore, the Court finds that Sections 188.056, 188.057, 188.058, and 188.375 shall be enjoined.

c. Reasons Ban. Section 188.038.2 states,

> [n]o person shall perform or induce an abortion on a woman if the person knows that the woman is seeking the abortion solely because of a prenatal diagnosis, test, or

screening indicating Down Syndrome or the potential of Down Syndrome in an unborn child. 188.038.2 RSMo.

Section 188.038.3 states, "[n]o person shall perform or induce an abortion on a woman if the person knows that the woman is seeking the abortion solely because of the sex or race of the unborn child." 188.038.3 RSMo. Any physician or other person "who performs or induces or attempts to perform or induce an abortion prohibited by [Section 188.038] shall be subject to all applicable civil penalties under this chapter including, but not limited to, sections 188.065 [license revocation] and 188.085 [civil liability for medical malpractice]." § 188.038.4 RSMo. Section 188.052 contains a related provision which requires the physician who performed or induced the abortion to complete an individual abortion report that certifies that physician does not have knowledge that the person seeking an abortion is doing so solely because one of the reasons stated in § 188.038. § 188.052.1 RSMo.; 19 CSR 10-15.010(1).

Consistent with this Court's analysis above, the laws are presumptively invalid under Article I, Section 36.3. Because Defendants have demonstrated no compelling governmental interest achieved by the least restrictive means justifying these statutory provisions, the Court finds that Plaintiffs are likely to prevail on the merits. As above, the threat of irreparable harm is apparent here as well. Parties do not articulate and this Court does not find that issuance of this injunction would inflict harm and injury on other interested parties. The Court also finds that the public interest, as illustrated by the majority who voted to pass Amendment 3, is on the side of granting this injunction. Therefore, the Court finds that § 188.038 and reporting requirements provided in § 188.052 and 19 CSR § 10-15.010(1) shall be enjoined.

2. Missouri's Abortion Facility Licensing Requirements: §§ 197.200-.235, 334.100.2(27) RSMo. and all of its implementing regulations; 19 C.S.R. §§ 30-30.050 –.070, 20 C.S.R. § 2150-7.140(2)(V).

Sections 197.200 to 197.235 and 334.100.2(27), 19 CSR 30-30.050-.070, and 20 CSR § 2150-7.140(2)(V) contain a number of requirements specifically directed at abortion facilities and ambulatory surgical centers, as those terms are defined by § 197.200. The Missouri Constitution Article I, Section 36.6 states, "[t]he Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." Mo. Cont. Art. I, § 36.6. This set of statutes and regulations apply only to abortion facilities and not to any other similarly situated health care facility. The regulations require physicians to perform certain exams and tests that are unnecessary when the physicians themselves are authorized and enabled to make the determination on what is and is not necessary for their individual patients. Additionally, miscarriage management can be provided on an outpatient basis without a special facility license. The stipulated affidavits show that miscarriage management and abortion medication/procedures often mirror each other. Based on the foregoing, the Court finds the facility licensing requirement is facially discriminatory because it does not treat services provided in abortion facilities the same as other types of similarly situated health care, including miscarriage care.

The Court finds Plaintiffs are likely to prevail on the merits and have met the other requirements for entry of a preliminary injunction provided in *Dataphase*. *Rounds*, 530 F.3d 724; *Dataphase,* 640 F.2d 109. Therefore, §§ 197.200 to 197.235 and 334.100.2(27), 19 CSR 30-30.050-.070, and 20 CSR § 2150-7.140(2)(V) shall be enjoined.

3. Missouri's Hospital Relationship Restrictions: §§ 188.080, 188.027.1(1)(e), 197.215.1(2) RSMo.; 19 C.S.R. § 30-30.060(1)(C)(4).

This category of laws requires physicians providing abortions to have admitting privileges at hospitals that offer obstetric or gynecological care within thirty miles or fifteen-minutes travel

time to the health center where they provide any abortion. A written transfer agreement with a nearby hospital is one option for complying with some, but not all, of these requirements. Section 188.080[4] makes it a class A misdemeanor for any physician performing or inducing an abortion to not have clinical privileges as set forth in these laws. This admitting privileges requirement and geographical limitations clearly "…den[y], interfer[e] with, dela[y], or otherwise restric[t]" reproductive freedom and since there was no evidence demonstrating that these laws are "for the limited purpose and ha[ve] the limited effect of improving or maintaining the health of a person seeking care, consistent with widely accepted clinical standards of practice and evidence-based medicine, and [do] not infringe on that person's autonomous decision-making," no compelling governmental interest exists. Mo. Const. Art. I, § 36.3. Nor was it shown that these statutes are the "least restrictive means." *Id.*

The Court finds Plaintiffs are likely to prevail on the merits, as the threat of irreparable harm has already been established as provided above, and balancing potential harm to other interested parties with the public interest also weigh in Plaintiffs' favor as this Amendment was passed by a majority vote. For all of the foregoing, §§ 188.080 (limited as provided in footnote 7), 188.027.1(1)(e), 197.215.1(2), as well as 19 C.S.R. § 30-30.060(1)(C)(4) shall be enjoined.

4. Missouri's Medication Abortion Complication Plan Requirement: § 188.021.2 RSMo.; 19 C.S.R. § 30-30.061.

Pursuant to § 188.021.2, before providing medication abortion, providers must have a DHSS-approved complication plan. This plan requires medication abortion providers to have a written contract with a board-certified or board-eligible Ob-Gyn (or Ob-Gyn group) who has agreed to be "on-call and available twenty-four hours a day, seven days a week" to "[p]ersonally

[4] The analysis in this section only pertains to the language of § 188.080 requiring a physician's clinical privileges within 30 miles from the location of the abortion facility. The analysis of the statutory requirement permitting only physicians to perform abortions is discussed in the section labeled Missouri's Advanced Practice Clinician Ban.

treat all complications" from medication abortion "except in any case where doing so would not be in accordance with the standard of care, or in any case where it would be in the patient's best interest for a different physician to treat her." 19 C.S.R. § 30-30.061. Plaintiffs argue it is difficult to find physicians willing to agree to the required responsibilities and some facilities are not able to comply.

The Court finds the language of § 188.021.2 does not necessarily deny, interfere with, delay or otherwise restrict reproductive freedom; rather it is the language in the regulations that contain this specific requirement that do deny, interfere with, delay or otherwise restrict reproductive freedom without the necessary showing that such restriction has the limited purpose and effect of improving or maintaining the health of the person seeking care. For example, a person who travels three hours to get a medication abortion and then returns home, would not benefit from this requirement. If complications arise after taking the medication, the individual would need to seek emergency care at the nearest hospital emergency room, as with any other medical emergency. Plaintiffs have demonstrated they are likely to prevail as to the regulations only, and considering all of the other factors for granting a preliminary injunction, 19 C.S.R. § 30-30.061, as it pertains to the complication plan, is enjoined.

5. Missouri's Pathology Requirements: § 188.047 RSMo.; 19 C.S.R. §§ 10-15.030, 19 C.S.R. 30-30.060(5)(B).

Missouri law requires that "[a]ll tissue . . . removed at the time of abortion shall be submitted within five days to a board-eligible or certified pathologist for gross and histopathological examination." § 188.047 RSMo. The pathologist is then required to file a "tissue report" with DHSS and provide a copy of the report to the health center that provided the abortion. *Id.*; *see also* 19 C.S.R. § 10-15.030, 19 C.S.R. § 30-30.060(5)(B). Plaintiffs stipulated, for purposes of the preliminary injunctive relief requested, that they have not attempted to contact any

pathologists in Missouri about the Pathology Requirements since at least 2022, and state that they are currently "unaware of any pathologists in Missouri who are willing to contract with them to provide such an examination and report." Plaintiffs' Suggestions in Support of Their Motion for Preliminary Injunction or, in the Alternative, Temporary Restraining Order at 37 (citing Wales Aff. ¶ 30; Muniz Aff. ¶ 31).

State Defendants argue that these laws further patient health because it helps detect incomplete abortions, however, pathology of pregnancy tissue after an abortion cannot determine whether the abortion is complete or incomplete. Plaintiffs' Reply Suggestions in Support of Their Motion for Preliminary Injunction or, In the Alternative, Temporary Restraining Order, and Suggestions in Opposition to State Defendants' Motion to Dismiss at 42 (citing Grossman Aff. ¶ 112). These pathology requirements "den[y], interfer[e] with, dela[y], or otherwise restric[t]" reproductive freedom and there was no evidence provided that these laws are "for the limited purpose and ha[ve] the limited effect of improving or maintaining the health of a person seeking care, [are] consistent with widely accepted clinical standards of practice and evidence-based medicine, and [do] not infringe on that person's autonomous decision-making" to support the government's purported compelling interest. Mo. Const. Art. I, § 36.3. Nor was it shown that this statute and regulations are the "least restrictive means." *Id.*

The Court finds Plaintiffs are likely to prevail on the merits, the threat of irreparable harm has already been established as provided in the above, and balancing potential harm to other interested parties and the public interest also weigh in Plaintiffs' favor as this Amendment was passed by a majority vote. Therefore, § 188.047 and 19 C.S.R §§ 10-15.030 and 30-30.060(5)(B) shall be enjoined.

6. Missouri's Abortion-Specific Informed Consent Laws: §§ 188.027, 188.033, 188.039, RSMo.[5]

Plaintiffs challenge §§ 188.027, 188.033, and 188.039, which the Court will refer to as Missouri's Abortion-Specific Informed Consent Laws. Pursuant to these statutes, before a patient obtains an abortion, they must receive certain state-mandated information and materials that Plaintiffs argue are biased and meant to stigmatize patients' decision to obtain an abortion. As an example, § 188.027.1(2) requires individuals be presented with "…printed materials provided by [DHHS], which describe the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from conception to full term, including color photographs or images of the developing unborn child at two-week gestational increments." 188.027.1(2) RSMo. That section further requires,

> [s]uch descriptions shall include information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development and information on when the unborn child is viable. The printed material shall prominently display the following statement: "The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being." § 188.027.1(2) RSMo.

Section 188.027 is a long statute and encompasses many of the other legal requirements Plaintiffs seek to enjoin, such as the 72-hour waiting period that is discussed in the next section. Section 188.033 requires the same information be provided to individuals who are considering obtaining an abortion outside of the state. Plaintiffs have shown they are likely to prevail on the merits because there was no evidence that any compelling governmental interest was achieved by utilizing the "least restrictive means" as required by Mo. Const. Art. I, § 36.3. The threat of irreparable harm has already been established as provided above, and balancing potential harm to

[5] Plaintiffs collectively refer to these as the "Biased Information Law."

other interested parties with the public interest also weigh in Plaintiffs' favor as this Amendment was passed by a majority vote. Therefore, §§ 188.027 and 188.033 shall be enjoined.

Section 188.039 primarily addresses the 72-hour waiting period that the Court will address in the section below. However, the language in § 188.039.4 pertains to informed consent, specifically, that a person must sign and give their "informed consent freely and without coercion" after discussing "…the indicators and contraindicators, and risk factors, including any physical, physiological or situational factors." § 188.039.4. RSMo.

The Court finds for purposes of Plaintiffs' requests for injunctive relief, the general laws of informed consent for any medical treatment and procedures sufficiently cover any separate purposes that may be served by § 188.039.4 and that Plaintiffs are likely to prevail on the merits. There was no evidence demonstrating that any compelling governmental interest would be achieved by the "least restrictive means" as required by Mo. Const. Art. I, § 36.3. The threat of irreparable harm has already been established as provided above, and balancing potential harm to other interested parties with the public interest also weigh in Plaintiffs' favor as this Amendment was passed by a majority vote. Therefore, § 188.039.4, solely as it pertains to this special informed consent requirement, shall be enjoined.

7. Missouri's Waiting Period, In-Person, and Same Physician Requirements: §§ 188.027, 188.039, RSMo.

Sections 188.027 and 188.039 require abortion patients to make two in-person visits to see the same physician, at least 72 hours apart. If the 72-hour waiting period is enjoined, the law specifies that a 24-hour waiting period is to take its place. §§ 188.027.12, 188.039.7 RSMo. At the patient's first appointment, the physician is required to provide the patient with the information described in the preceding section. State Defendants do not contest that these requirements delay patients' access to abortion care by at least 72 hours (or, in the alternative, 24 hours). A mandatory

waiting period clearly "den[ies], interfere[s] with, delay[s], or otherwise restrict[s]" reproductive freedom and since there was no evidence presented that these laws are "for the limited purpose and ha[ve] the limited effect of improving or maintaining the health of a person seeking care, consistent with widely accepted clinical standards of practice and evidence-based medicine, and [do] not infringe on that person's autonomous decision-making," there is no compelling governmental interest. Mo. Const. Art. I, § 36.3. Nor was there any evidence to explain why a waiting period of 72 hours, or in the alternative 24 hours, is the "least restrictive means" in carrying out any purported government interest. *Id.*

The Court finds Plaintiffs are likely to prevail on the merits, the threat of irreparable harm has already been established, and balancing potential harm to other interested parties with the public interest also weigh in Plaintiffs' favor, as this Amendment was passed by a majority vote. Therefore, the provisions in Sections 188.027 and 188.039 pertaining to the waiting period shall be enjoined.

As for the In-Person requirement, State Defendants argue that an in-person appointment is necessary because only an in-person appointment can confirm gestational age for purposes of appropriate use of the abortion pill (which the FDA has approved for the first ten weeks of a pregnancy) and to rule out an ectopic pregnancy. The Court finds Plaintiffs have not demonstrated they are likely to prevail on the merits as to the In-Person requirement. The Court further finds there may be a compelling governmental interest and therefore, denies the request to enjoin this requirement.

Similarly, State Defendants argue the Same Physician requirement is necessary to establish continuity of care. Plaintiffs argue that this creates scheduling issues. The Court notes these alleged scheduling issues occur in conjunction with the 72-hour waiting period. Therefore, absent the 72-

hour waiting period, the Court finds Plaintiffs have not demonstrated they are likely to prevail on the merits as it pertains to this requirement, and denies the request to enjoin the Same Physician requirement.

8. Missouri's Telemedicine Ban: § 188.021 RSMo.

Plaintiffs challenge § 188.021,[6] which states, in part,

> [w]hen 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. § 188.021.1 RSMo.

Plaintiffs refer to this as the "Telemedicine Ban." This language prohibits telehealth appointments and requires a physician to be physically present in the room while a patient is taking the medication. This seemingly would not allow a physician to prescribe the medication after an in-person appointment and having the patient subsequently take the medication at home or even in a medical facility in the presence of a nurse or other medical professional.

The language of this portion of the statute "…den[ies], interfere[s] with, delay[s], or otherwise restrict[s]" reproductive freedom and there was no evidence that this law is "for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making" to establish a compelling governmental interest. Mo. Const. Art. I, § 36.3. Nor was it shown that this statute is the "least restrictive means." *Id.*

The Court finds Plaintiffs are likely to prevail on the merits, the threat of irreparable harm has already been established as provided above, and balancing potential harm to other interested

[6] Plaintiffs cite to §188.021 in its entirety in this portion of the argument, but only 188.021.1 has language that could be interpreted as a ban on "telehealth" appointments.

parties with the public interest also weigh in Plaintiffs' favor as this Amendment was passed by a majority vote. Therefore, § 188.021.1 shall be enjoined.

9. Missouri's Advance Practice Clinician Ban: §§ 188.020, 188.080, 334.245, 334.735.3 RSMo.

Missouri law requires abortions to be performed by physicians only, rather than physician's assistants ("PAs") and Advanced Practice Registered Nurses ("APRNs"), collectively known as Advanced Practice Clinicians ("APCs"). *See* §§ 188.020, 188.080, 334.245, 334.735.3 RSMo. Plaintiffs argue that if APCs were allowed to perform abortions, it would increase their ability to provide care. Plaintiffs also argue that APCs are just as qualified as physicians to provide many forms of abortion care. There are many forms of abortion care, making this facial challenge by Plaintiffs a difficult one at this stage of litigation because there may be a compelling governmental interest to allow only physicians to perform some kinds of abortion care. Therefore, Plaintiffs have not made their threshold showing that they are likely to prevail on the merits on this point and the request for injunctive relief is denied.

10. Criminal Penalties for Abortion Providers: §§ 188.017.2, 188.030.3, 188.056.1, 188.057.01, 188.058.1, 188.075, 188.080, 188.375.3, 197.235, 334.245, 574.200.2 RSMo.

Article I, § 36.5 states:

> No person shall be **penalized, prosecuted, or otherwise subjected to adverse action** based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. **Nor shall any person assisting a person in exercising their right to reproductive freedom** with that person's consent **be penalized, prosecuted, or otherwise subjected to adverse action** for doing so.

(emphasis added.)

Several of these statutes have already been discussed in the preceding sections. Specifically, the Court has already found §§ 188.017, 188.056, 188.057, 188.058, 188.375, shall be enjoined, and as such, it is appropriate that their respective criminal penalties be enjoined at this time pursuant to Mo. Const. Art. I, § 36.5.

Sections 197.235 and 334.245 were also previously discussed and were not enjoined, and their respective criminal penalties shall not be enjoined at this time.

Section 188.080 was previously discussed and enjoined only as it pertains to physicians' admitting privileges at a hospital within 30 miles of the abortion facility. The requirement to have only physicians perform abortions was not enjoined. As such, the criminal penalties will apply only to the portion of that statute that is not enjoined pursuant to Mo. Const. Art. I, § 36.5.

Plaintiffs include §§ 188.030.3 and 574.200.2 in this category of laws, but do not provide any argument regarding these specific provisions. Therefore, the Court finds the Plaintiffs have not met their burden for a preliminary injunction as to these two statutes.

BOND

Missouri Supreme Court Rule 92.02(d) requires Plaintiffs to execute a bond. Plaintiffs requests a bond of $100.00. No objection was made by Defendants. The Court finds bond set at $100.00 is appropriate.

CONCLUSION

For all of the foregoing, it is, therefore

ORDERED, ADJUDGED, AND DECREED that the requests for injunctive relief contained in Plaintiffs' Motion for Preliminary Injunction, or, in the Alternative, Temporary Restraining Order, filed on November 6, 2024 and Plaintiffs' Motion for Reconsideration, filed on December 30, 2024, are **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall file a bond in the amount of $100.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all other relief not specifically granted herein is hereby DENIED.

IT IS SO ORDERED.

July 3, 2025
Date

HON. JERRI J. ZHANG
Judge, Division 3

CC: All counsel via e-Notification