

IN THE MISSOURI CIRCUIT COURT  
FOR THE NINETEENTH JUDICIAL CIRCUIT  
COUNTY OF COLE

MARY DOE, )  
)  
Plaintiff, )

v. )

Case No.

JEREMIAH JAY NIXON, )  
GOVERNOR OF THE STATE OF )  
MISSOURI, )

Division:

Serve at: )  
Office of the Governor )  
Rm. 218, State Capitol Building )  
Jefferson City, MO 65102 )

and )

CHRIS KOSTER, ATTORNEY )  
GENERAL OF THE STATE OF )  
MISSOURI, )

Serve at: )  
Missouri Attorney General's )  
Office )  
Supreme Court Building )  
207 W. High St. )  
P.O. Box 899 )  
Jefferson City, MO 65102 )

Defendants )

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
A TEMPORARY RESTRAINING ORDER**

Plaintiff Mary Doe is pregnant and went to Planned Parenthood in St. Louis today to get an abortion. But Planned Parenthood refused to give her an abortion because the State of Missouri officially believes the abortion she wants “will terminate the life of a separate, unique, living human being.” The State of Missouri therefore requires Mary

Doe be given written materials and the opportunity to view an ultrasound before she can get an abortion. The purpose of these conditions is to show Mary Doe that the fetal tissue she carries has a brain, heart, internal organs, limbs, and heartbeat (if one exists). Then the State of Missouri requires her to wait seventy-two hours to ponder one of the most vexing, difficult, and contentious issues of our time—whether she agrees with the State of Missouri that an abortion “will terminate the life of a separate, unique, living human being.”

This is a wholly pointless exercise for Mary Doe because she has already decided, as a matter of her deeply held religious beliefs, that the tissue she wants removed from her body (“Tissue”) is not a separate, unique, living human being. There is no point served by requiring Mary Doe to wait seventy-two hours to get an abortion other than the hope of the people who wrote the statute that she will read the materials, listen to the fetal heartbeat (if any), and then embrace the State of Missouri’s belief (and the drafters’ belief) that the Tissue is a “human being.”

That is not going to happen. Mary Doe now needs the help of the Court to get her abortion today without interference by the State of Missouri.

Mary Doe reached her decision to get an abortion (“Decision”) by following her deeply held religious beliefs (“Tenets”):

- Her body is inviolable and subject to her will alone.
- She makes any decision regarding her health based on the best scientific understanding of the world, even if the science does not comport with the religious or political beliefs of others.
- Her inviolable body includes any fetal or embryonic tissue she carries so long as that tissue is unable to survive outside her body as an independent human being.

- She—and she alone—decides whether her inviolable body remains pregnant and she may, in good conscience, disregard the current or future condition of the Tissue in making that decision.

The Decision is substantially motivated and informed by Mary Doe’s belief in the Tenets. Thus its implementation, i.e., getting an abortion, is the “exercise of religion” protected by the Religious Freedom Restoration Act (“RFRA”). *See* Mo. Rev. Stat. §1.302.2.

The RFRA does not define a “religious belief.” The scope of a “religious belief” is as wide and varied as the human experience—from the worship of the inanimate (sun and moon), to the animate (trees and animals), to the mythic (Satan and Zeus), to individuals (Christ and Mohammed), to many gods (Hindu) or just one god (Judaism) or even a philosophy (Zen). An act motivated by a “religious belief” can run the full range of human activity from singing a hymn in a quiet country church to the suicide bombing of “the infidel” on the streets of Bagdad. It includes getting an abortion when, as in this case, the act is motivated by and is an expression of one’s deeply held religious beliefs. *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 714 (1981) (“Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”).

The only limits RFRA places on the “exercise of religion” is that the act cannot “cause physical injury to another person,” lead to the possession of a “weapon otherwise prohibited by law,” or the failure “to provide monetary support for a child or . . . health care for a child suffering from a life-threatening condition.” Mo. Rev. Stat. § 1.307.3.

The statutory definition of “person” does not include the Tissue because the U.S. Supreme Court has made clear a non-viable fetus does not have the legal status of a

“person” in an abortion. *See* Mo. Rev. Stat. § 1.205.2 (“The laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court (emphasis added).” *See Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 779 (1986) (Stevens, J., concurring) (“[T]here is a fundamental and well-recognized difference between a fetus and a human being.”). Mary Doe—not the State of Missouri—determines whether the Tissue is a “person” in deciding whether she can exercise her religious beliefs by getting an abortion. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992) (“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”); *see also Roe v. Wade*, 410 U.S. 113 (1973).

RFRA requires that any statutory conditions on the implementation of the Decision be “essential” to a “compelling state interest.” Mo. Rev. Stat. § 1.302.1. The Missouri legislature expressly recognizes that Mary Doe’s ability to make the Decision freely, voluntarily, without coercion and in an informed manner is a compelling state interest (“Plaintiff’s Freedom of Choice”). Mo. Rev. Stat. § 188.027(11). Thus any restrictions on or conditions to Mary Doe’s getting an abortion must be essential to Plaintiff’s Freedom of Choice.

There are two statutory conditions to an abortion that are not essential to Plaintiff's Freedom of Choice. Rather, their only purpose is to promote the statutory premise that "Abortion will terminate the life of a separate, unique, living human being." Mo. Rev. Stat. § 188.027.1(g)(2).

Plaintiff does not, as a matter of her deeply held religious beliefs, agree with that premise. It is antithetical to her belief that the condition of the Tissue is determined by the best scientific understanding of the world. There is no scientific evidence that the Tissue is a "human being" that has a "unique" life "separate" from Mary Doe's body. Mary Doe's deeply held religious belief, which is based on the best available scientific evidence, is that the Tissue is part of her body.

The first statutory condition promoting the State's definition of "human being" is that Mary Doe must receive a booklet prepared by the Missouri Department of Health and Senior Services ("Booklet"), which describes the condition of the Tissue's brain, heart, external members, internal organs, ability to feel pain and date of viability. Mo. Rev. Stat. § 188.027.1(g)(2) and (5). These considerations are antithetical to Mary Doe's deeply held religious belief that she can cause the removal of the Tissue from her body without regard to its current or future condition. They are therefore wholly irrelevant to Plaintiff's Freedom of Choice.

The second statutory condition promoting the State's definition of "human being" is that Mary Doe must be offered the opportunity to get an ultrasound and listen to the heartbeat (if any) of the Tissue and then wait seventy-two hours before having the abortion. Mo. Rev. Stat. § 188.027.3. This too is antithetical to Mary Doe's deeply held religious belief that she can cause the removal of the Tissue from her body without regard

to its current or future condition, including but not limited to whether it has an audible heartbeat. This condition is also wholly irrelevant to Plaintiff's Freedom of Choice.

The conditions imposed on an abortion by Mo. Rev. Stat. §§188.027.1(g)(2) and (5) and 188.027.3 have one purpose and one purpose only—to persuade women that the “unborn child” they carry is a “human being” who will be murdered by an abortion. This is based on a philosophical and religious premise that is not supported by scientific evidence, to wit, a non-viable fetus has the “life of a separate, unique, living human being.”

With all due respect to the State of Missouri and its legislative process, Mary Doe does not agree with that philosophical and religious premise. The attempt by the State of Missouri to persuade her otherwise is an infringement on the exercise of Mary Doe's religion and must be enjoined.

The Missouri Supreme Court Rules require Mary Doe to show she will suffer “immediate and irreparable injury, loss, or damage will result in the absence of relief” to get a temporary restraining order. Mo. S. Ct. R. 92.02(a)(1). She has been denied the exercise of her religious beliefs by the application of Mo. Rev. Stat. §§ 188.027.1(g)(2) and (5) and 188.027.3. Those limitations on the free exercise of her religion inflict irreparable injury. *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574 (2<sup>nd</sup> Cir. 2002); *Kikumura v. Hurley*, 242 F.3d 950, 963 (10<sup>th</sup> Cir. 2001). That denial will continue for at least seventy-two hours, which is also irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (loss of first amendment rights, even for minimal periods of time, constitutes irreparable injury); *Swartzwelder v. McNeilly*, 297 F.3d 228,

241 (3<sup>d</sup> Cir. 2002) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”)

WHEREFORE, Plaintiff Mary Doe respectfully requests the entry of an order that:

A. Enjoins Defendants, their officers and agents from enforcing Mo. Rev. Stat. §§ 188.027.1(g)(2) and (5) and 188.027.3 against her or any person who provides her an abortion, including without limitation Planned Parenthood;

B. Declares the waiting periods in Sections 188.027.3 and 188.027.12 are null and void;

C. Declares Plaintiff may obtain an abortion without complying with Mo. Rev. Stat. §§ 188.027.1(g)(2) and (5) and 188.027.3;

D. Declares that any person lawfully authorized to provide abortions in Missouri, including without limitation Planned Parenthood, may provide Plaintiff with an abortion without complying with Mo. Rev. Stat. §§ 188.027.1(g)(2) and (5) and 188.027.3;

E. Grants Plaintiff reasonable attorney fees and costs; and

F. Grants Plaintiff any additional relief deemed just and proper under the circumstances.

May 8, 2015

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On the Brief: W. James Mac Naughton  
(pro hac vice motion to be filed)