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

MARY DOE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 15AC-CC00205**
	)	
JEREMIAH JAY NIXON, et al	)	
	)	
Defendants	)	

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSTION TO THE MOTION OF DEFENDANTS NIXON AND KOSTER TO DISMISS

Introduction

Plaintiff Mary Doe submits this memorandum of law in opposition to Defendants Nixon and Koster's Motion to Dismiss Second Amended Petition and Suggestions in Support dated September 29, 2016 ("Defendants' Motion"). Plaintiff's rights under the Religion Clauses of the First Amendment and Missouri's Religious Freedom Restoration Act (RFRA) were violated because she could not get an abortion without being subjected to the State of Missouri's official religious tenets that "[t]he life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being" (the "Missouri Tenets"). Plaintiff's sincerely held religious beliefs were that "[h]er Fetal Tissue[1] is part of her body and not a separate, unique living human being;" she alone "decides whether, when and how to proceed" with an abortion; and she "may, in good conscience, have an abortion without regard to the current or future

[1] Capitalized terms have the same meaning as in the Second Amended Petition. Fetal Tissue is an "unborn child" that is not "viable." *See* Mo. Rev. Stat. § 188.015(10).

condition of her Fetal Tissue." Second Am. Pet. at ¶27. Plaintiff, in the exercise of her religious beliefs, asked her doctor remove her Fetal Tissue without being subjected to the Missouri Lectionary, i.e., the Ultrasound, Audible Heartbeat Offer, Booklet and Waiting Period that promote the Missouri Tenets. Second Am. Pet. at ¶¶61 and 62. Plaintiff's request was denied because the State of Missouri required her doctor to withhold an abortion until after Plaintiff had received the Missouri Tenets and the Missouri Lectionary. Second Am. Pet. at ¶64. To add insult to injury, Plaintiff had to pay the costs of the Missouri Lectionary. Second Am. Pet. at ¶71.

Defendants argue Plaintiff "is merely cloaking her political beliefs in the mantle of religious faith in order to avoid laws of general applicability she finds imprudent or offensive." Defendant's Motion at p. 10. But it is the State of Missouri that has cloaked a routine medical procedure with the "mantle of religious faith." The State of Missouri has, in the adoption and implementation of the Missouri Tenets and Missouri Lectionary, politicized religion in violation of the Religion Clauses and RFRA. *Larson v. Valente*, 456 U.S. 228, 252, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982) ("*Larson*") (State law drafted with the explicit intention of promoting one religious denomination violates the Establishment Clause because it "engender[s] a risk of politicizing religion [causing] political fragmentation on sectarian lines."). The Missouri Tenets and Missouri Lectionary violate the core purpose of the Religion Clauses—to protect religious debate from resolution by governmental fiat. *Engel v. Vitale*, 370 U.S. 421, 443, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962) ("*Engel")*, (Douglas, J. concurring) ("[I]f a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government.").

One of the most contentious philosophical, religious and political debates of our time is when does human tissue *in utero* become imbued with sufficient stature as a "human being" to be treated in the same manner as a baby that lives and breathes separate and apart from his or her mother. By enacting the Missouri Tenets and requiring delivery of the Missouri Lectionary, the State of Missouri officially weighs in on the side that believes a human being begins at conception and abortion is murder. The Missouri Lectionary and Missouri Tenets dictate—by legislative fiat—matters the Religion Clauses preserve for resolution solely in the hearts and minds of individual citizens.

The Missouri Lectionary and Missouri Tenets are "an impermissible state adoption of a theory when life begins." *Webster v. Reproductive Health Services*, 851 F.2d 1071, 1076 (8th Cir. 1988) ("*Webster*"), *rev'd other grounds*, 492 U.S. 490 (1989). The Missouri Tenets and Missouri Lectionary explicitly adopt the religious belief of some–though not all—Christians that the life of a human being starts at conception. The full power and majesty of the State of Missouri are brought to bear on Plaintiff to persuade her that the Missouri Tenets are true, her beliefs are false and she is committing murder when she causes the removal of Fetal Tissue from her body.

The Missouri Tenets and Missouri Lectionary violate the Religion Clauses and RFRA because they are a full frontal assault on one of the bedrock principles of our democracy – each individual's unique right to decide a spiritual truth for himself or herself. In this case, it is the decision between whether a fetus is a "human being" imbued with a soul upon conception whose abortion is murder or simply a body part that can, in good conscience, be removed on demand and without consideration of its current or future condition. The Religion Clauses and RFRA protect Plaintiff's right to make

that decision for herself without interference or influence by the State of Missouri. "We are all of us on a search for truth, and the Establishment Clause prohibits the government from purposefully steering us in a particular direction." *ACLU Neb. Found. v. City of Plattsmouth, Neb.*, 358 F.3d 1020, 1042 (8th Cir. 2004), *rev'd en banc on other grounds*, 419 F.3d 772 (8th Cir. 2005) ("*City of Plattsmouth*"). *See also Turner Broad. Sys., Inc. v. Fed. Communications Comm'n*, 512 U.S. 622, 641, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994) ("At the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal.").

The Missouri Lectionary and Missouri Tenets Violate the Establishment Clause.

Defendants argue the U.S. Supreme Court relied on the Establishment Clause to reverse the Eighth Circuit's ruling in *Webster* that the Missouri Tenets are "an impermissible state adoption of a theory when life begins." Defendant's Motion at pp. 14-15. That is not correct.

The Supreme Court said the Missouri Tenets could be read to express a "value judgment" favoring childbirth over abortion. The Supreme Court left undecided the very issues presented to this Court of whether the imposition of that "value judgment" on a woman seeking an abortion violates her rights under the Religion Clauses and RFRA:

> The extent to which the preamble's language might be used to interpret other state statutes or regulations is something that only the state courts can definitively decide, and, until those courts have applied the preamble to restrict Appellees' activities in some concrete way, it is inappropriate for federal courts to address its meaning.

492 U.S. at 491.

Justice Stevens, who concurred in part and dissented in part in *Webster*, found the

Missouri Tenets violated the Establishment Clause:

> Indeed, I am persuaded that the absence of any secular purpose for the legislative declarations that life begins at conception and that conception occurs at fertilization makes the relevant portion of the preamble invalid under the Establishment Clause of the First Amendment to the Federal Constitution. This conclusion does not, and could not, rest on the fact that the statement happens to coincide with the tenets of certain religions, or on the fact that the legislators who voted to enact it may have been motivated by religious considerations. Rather, it rests on the fact that the preamble, an unequivocal endorsement of a religious tenet of some but by no means all Christian faiths, serves no identifiable secular purpose. That fact alone compels a conclusion that the statute violates the Establishment Clause. [internal quotations and citations omitted]

492 U.S. at 566-67.[2]

Neither the Eighth Circuit nor the Supreme Court was presented with the First Amendment issues of this case and thus neither had reason to conclusively decide whether a legislative declaration of "when life begins" violates the Establishment Clause. Thus the question for this Court is whether preaching the "state's theory of when life begins" to a woman seeking an abortion using the Missouri Lectionary violates the Establishment Clause. Plaintiff submits it does.

There are few absolutes in Establishment Clause jurisprudence. However, one absolute is the Establishment Clause forbids "government-sponsored indoctrination into the beliefs of a particular religious faith." *Grand Rapids School Dist. v. Ball*, 473 U.S. 373, 385 (1985) ("*Ball*"). *See also Larson*, 456 U.S. at 244 ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred

[2] Justice Stevens traced the theological origins for the Missouri Tenets back to St. Thomas Aquinas and concluded "[i]f the views of St. Thomas were held as widely today as they were in the Middle Ages, and if a state legislature were to enact a statute prefaced with a 'finding' that female life begins 80 days after conception and male life begins 40 days after conception, I have no doubt that this Court would promptly conclude that such an endorsement of a particular religious tenet is violative of the Establishment Clause." 492 U.S. at 568.

over another."). Defendants do not dispute the Missouri Tenets are a statement of religious belief. Defendants do not dispute the sole purpose of the Missouri Lectionary is to promote the Missouri Tenets. Defendants do not dispute the Missouri Tenets represent the views of only some – but not all – Christians.

Plaintiff and millions of other Missouri citizens do not believe the Missouri Tenets. Nor, for that matter, do the secular courts in this country. *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.").

The *sole* purpose of the Missouri Lectionary is to indoctrinate Plaintiff into the belief held by some Christians that a separate and unique human being begins at conception. It is devoid of any facts or consideration of the theological proposition that Fetal Tissue in not a separate and unique human being but rather tissue physically integrated into a woman by an umbilical cord.

On their face and in practice, the Missouri Tenets and Missouri Lectionary discriminate against Plaintiff's religious belief that she can, in good conscience, get an abortion on demand without consideration of the current or future condition of the fetus and without considering any proselytizing by the State of Missouri. The Missouri Tenets and Missouri Lectionary offer nothing to support Plaintiff's religious beliefs. Such discrimination renders the Missouri Tenets and Missouri Lectionary unconstitutional because they are not narrowly tailored to serve a compelling government interest. *Larson*, 456 U.S. at 247.

In L*arson*, Court found that a facially neutral law discriminated between "well-established churches" and "churches which are new and lacking in a constituency." This discrimination violated the Establishment Clause because the law had both the purpose

and the effect of discriminating against certain religious points of view. The Supreme Court struck down the law under the Establishment Clause saying it "does not operate evenhandedly [and] effects the selective legislative imposition of burdens and advantages upon particular denominations." *Id.* at 253-54.

If the Missouri Lectionary and Missouri Tenet were truly evenhanded, they would present the myriad viewpoints on when a "human being" comes into existence, including Plaintiff's belief that her Fetal Tissue is not a "human being" until it becomes viable. A neutral statement would also presumably include St. Thomas Aquinas' view that female life begins 80 days after conception and male life begins 40 days after conception.

Defendants argue the State of Missouri should be excused for its Establishment Clause violation because Plaintiff was not *required* to read the Booklet, view the Ultrasound or listen to the fetal heartbeat. Defendants' Motion at p. 9. The fact that Plaintiff was not required to actually learn the lessons of the Missouri Lectionary is irrelevant. Plaintiff's rights under the Establishment Clause were violated because she was forced to receive the Missouri Lectionary and Missouri Tenets regardless of her personal beliefs or the impact they had on her beliefs. *Engel*, 370 U.S. at 430 ("The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not.").

Defendants argue the Missouri Lectionary and Missouri Tenets do not violate the Establishment Clause under *Lemon v. Kurtzman*, 403 U.S. 602 (1971) ("*Lemon*"). *Lemon* does not apply to this case because the Missouri Lectionary and Missouri Tenets are

discriminatory are their face and in practice. *City of Plattsmouth*, 358 F.3d at 1032 ("When the challenged government action discriminates among religions we apply *Larson* and review the government action with the 'strict scrutiny' standard" [internal citations omitted]).

But even assuming *Lemon* does apply, Defendants are unable to show the Missouri Lectionary and Missouri Tenets meet the *Lemon* requirements for validity because the Missouri Lectionary and Missouri Tenets 1) have no secular purpose; 2) advance one particular religious belief and discourage the exercise of other beliefs; and 3) foster an excessive entanglement of the state with religion.

Defendants ask the Court to engage in the pretense that the Missouri Lectionary and Missouri Tenets serve the secular purpose of "conveying the General Assembly's policy preference for carrying unwanted pregnancies to term rather than aborting them." Defendant's Motion at p. 15. That policy is implemented *solely* by trying to persuade a pregnant woman the Missouri Tenets are true and abortion is murder. That is religious proselytizing, not a secular purpose. *See Lynch v. Donnelly*, 465 U.S. 668, 690-91 (1984) (O'Connor, J. concurring) ("The purpose prong of the *Lemon* test requires that a government activity have a secular purpose. That requirement is not satisfied, however, by the mere existence of some secular purpose, however dominated by religious purposes.").

Indeed, the purported "preference for carrying unwanted pregnancies to term" is in direct conflict with the expressly stated legislative purpose of the Missouri Lectionary to promote the "compelling interest of the state to ensure that the choice to consent to an abortion is voluntary and informed, and given freely and without coercion." Mo. Rev. Stat. §188.027.11. This conflict shows the hypocrisy of the State of Missouri in trying to

put secular window dressing on "an impermissible state adoption of a theory when life begins."

The phrase "given freely and without coercion" is, at best, an unintended irony since the sole purpose of the Missouri Lectionary is to promote the Missouri Tenets. At worst, it is an exercise in Orwellian doublespeak that should give serious pause to anyone who knows the Founding Fathers did not want the government to establish a state religion.

But even assuming, *arguendo,* some secular purpose could be ascribed to the Missouri Lectionary, the second prong of the *Lemon* test is not satisfied because Plaintiff justifiably perceived the Missouri Lectionary as disapproval of her beliefs. The Missouri Lectionary makes clear Plaintiff's beliefs to do not enjoy the approval of the State of Missouri. That disapproval is the essence of an Establishment Clause violation. *Ball*, 473 U.S. at 389 ("Government promotes religion as effectively when it fosters a close identification of its powers and responsibilities with those of any — or all — religious denominations as when it attempts to inculcate specific religious doctrines. If this identification conveys a message of government endorsement or disapproval of religion, a core purpose of the Establishment Clause is violated."); *Gillette v. United States*, 401 US 437, 450 (1971) ("[T]he Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization.".)

The Missouri Lectionary and Missouri Tenet also promote an excessive entanglement of the State of Missouri in religious beliefs. In most states of the Union, a pregnant woman who goes into an abortion clinic can reasonably expect to be treated as a medical patient – dispassionately and without regard to her religious beliefs. The doctor's office is a place

where medical care, not theology, is dispensed. Not so in Missouri.

In Missouri, a pregnant woman has only one place to get an abortion, Planned Parenthood in St. Louis. Every day pregnant women run a gauntlet of Pro-Life advocates prowling the streets outside Planned Parenthood shouting and waving placards condemning women who enter Planned Parenthood for murdering unborn children.

Once inside Planned Parenthood, the pregnant woman finds the State of Missouri has turned the waiting room into a pulpit for preaching the same Missouri Tenets promoted by the zealots on the street, but with far more sophistication and cunning. She must acknowledge receipt of the Booklet. She must undergo an Ultrasound and be offered the "opportunity" to view the images and listen to the heartbeat.[3] She is then sent away for three days for no discernible purpose other than to reconsider her belief that abortion is not murder. She then returns to Planned Parenthood and once again runs the Pro-Life gauntlet. By the time she leaves Planned Parenthood after her abortion, she understandably feels doubt, guilt and shame. Indeed, that is the very purpose of the Missouri Lectionary.

The Missouri Lectionary has the same practical effect as if the State of Missouri invited the Pro-Life advocates to come off the streets and into the waiting rooms at Planned Parenthood so they can continue their haranguing condemnation of pregnant women who want an abortion. The Court would have no hesitation in striking down such an abuse of government power as an extreme entanglement of the state with religion.

The Missouri Lectionary brings the Pro-Life message into Planned Parenthood's waiting rooms with all the majesty and imprimatur of legitimacy the State of Missouri can muster. It is difficult to conceive of greater entanglement of state and religion than preaching

[3] Defendants erroneously argue Plaintiff was not required to have an ultrasound. Defendant's Motion at p. 14. That is not true. Planned Parenthood, which is charged by statute to deliver the Missouri Lectionary, required Plaintiff to get the Ultrasound and receive the Audible Heartbeat Offer. Second Amended Petition at ¶43.

the Pro-Life gospel in Planned Parenthood's waiting rooms at the patient's expense.

The Missouri Tenets and Missouri Lectionary Interfered with Plaintiff's Exercise of Her Religious Beliefs.

The crux of Defendants' opposition to Plaintiff's claims under the Free Exercise Clause and RFRA is that Plaintiff was not forced to perform any act prohibited by a deeply held religious belief or prohibited from performing any act substantially motivated by a deeply held religious belief. *See* Defendants' Motion at pp. 7-8. Defendants are correct that, unlike an Establishment Clause claim, Plaintiff must show the coercive effect of the Missouri Lectionary and Missouri Tenets upon her in the practice of her religion to state a claim for violation of the Free Exercise Clause or RFRA. *Abington School District v. Schempp*, 374 U.S. 203, 233 (1963) ("It is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion."). Defendants are incorrect that Plaintiff is not engaged in the exercise of her religious beliefs when she asks for an abortion at a time and in a manner of her choosing and without consideration of the Missouri Tenets or Missouri Lectionary.

Defendants do not dispute the Missouri Lectionary and Missouri Tenets impose unnecessary and unwanted costs, delays, guilt and shame on Plaintiff.[4] They clearly "operate against" Plaintiff because they condition her constitutional right to an abortion upon subjecting herself to a humiliating and prolonged critique of her religious beliefs. *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 717-18, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981) ("Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of

[4] Defendants trivialize these injuries by claiming the Missouri Lectionary merely causes "Plaintiff's abortion to occur at an inconvenient time and place." Defendants' Motion at p. 11.

conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.").

Instead, Defendants argue that the imposition of those financial, temporal and spiritual costs on Plaintiff did not interfere with the actual expression of her religious beliefs. Defendants argue that in the absence of an actual expression of her religious beliefs, Plaintiff is asking for an exemption from the Missouri Tenets and Missouri Lectionary – a "get out of jail free card" – simply because she does not agree with the religious beliefs expressed by the Missouri legislature.[5] Defendants' Motion at p. 10.

The most glaring flaw with this argument is the Court must accept as true the allegations of the Second Amended Petition that Defendants interfered with Plaintiff's actual exercise of her religious beliefs. As the Court said in *Davila v. Gladden*, 777 F.3d 1198 (11th Cir. 2015):

> First turning to religious exercise, the Supreme Court recently explained that it is not for us to say that a plaintiff's religious beliefs are mistaken or insubstantial. Instead, our narrow function in this context is to determine whether the line drawn between conduct that is and is not permitted under one's religion reflects an *honest conviction.* This rule minds the Supreme Court's warning that judges must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. A secular, civil court is a poor forum to litigate the sincerity of a person's

[5] Defendants argue Plaintiff "does not claim a deeply held religious belief against complying with 'irrelevant and unnecessary' regulations." Defendants' Motion at p. 8. That is not true. Plaintiff's religious beliefs are that "[s]he alone decides whether, when and how to proceed" with an abortion and she must make her decisions based on "the best scientific understanding of the world." Second Amended Petition at ¶27(b) and (d). The Missouri Tenets and Missouri Lectionary promote a religious belief, not science. Forced exposure to the Missouri Tenets and Missouri Lectionary offends Plaintiff's religious beliefs because they are not based on science and are, therefore, irrelevant and unnecessary.

> religious beliefs, particularly given that faith is, by definition, impossible to justify through reason. It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds. It is difficult to gauge the objective reasonableness of a belief that need not be acceptable, logical, consistent, or comprehensible to others. . . . Congress made plain that we lack any license to decide the relative value of a particular exercise to a religion. That being the case, we look only to see whether the claimant is in essence seeking to perpetrate a fraud on the court — whether he actually holds the beliefs he claims to hold.

777 F. 3d at 1204 (emphasis in the original; internal quotations and citations omitted).

As alleged in the Second Amended Petition, Plaintiff held an honest conviction, based on her religious beliefs, that she could have her Fetal Tissue removed at a time and manner of her choosing and without consideration of the Missouri Lectionary or the Missouri Tenets. Second Am. Pet. at ¶¶27 and 28. In the exercise of her religious beliefs, Plaintiff asked Planned Parenthood to give her an abortion on May 8, 2015, and without being subjected to the Missouri Lectionary or Missouri Tenets. Second Am. Pet. at ¶¶61 and 62. The State of Missouri interfered with Plaintiff's request when it compelled Planned Parenthood to deny it. Second Am. Pet. at ¶64. The State of Missouri further interfered with Plaintiff's request when it compelled Planned Parenthood to deliver the Missouri Tenets and Missouri Lectionary to Plaintiff over her objections and as a condition of providing an abortion. Second Amended Complaint at ¶72.[6] The

[6] Defendants argue "[n]either the Ultrasound Opportunity nor acknowledging receipt of the Booklet forced Plaintiff to perform any *act* prohibited by a deeply held religious belief." [emphasis in the original]. Defendants' Motion at p. 7. That is not true. The Ultrasound forced Plaintiff to subject herself to an irrelevant and unnecessary medical procedure. She then had to acknowledge receipt of the Ultrasound along with Booklet that promoted an irrelevant and unnecessary religious belief. Then she had to wait three days in a hotel for no good reason. These acts, required by the Missouri Lectionary, are offensive to Plaintiff's religious beliefs. She did them only because the State of Missouri made them a condition of getting an abortion.

Missouri Tenets and Missouri Lectionary did their intended job of costing Plaintiff time, psychic energy and money when she tried to get an abortion in a manner that comported with her religious beliefs. Second Amended Complaint at ¶72(e), (g) and (h).

The Court must accept these allegations as true. *Burwell v. Lobby Stores, Inc.*, ___, U.S. ____, 134 S. Ct. 2751, 2779 (2014) ("*Hobby Lobby*") ("[I]t is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our narrow function in this context is to determine whether the line drawn [between conduct that is and is not permitted under one's religion] reflects an honest conviction." [internal quotations and citations omitted]). Stated another way, the Court cannot, as a matter of law, accept Defendants' argument that Plaintiff's request for an exemption from the Missouri Tenets and Missouri Lectionary was a secular and political attempt to play a "get out of jail free card." The Court must accept as true Plaintiff's allegation that she requested an exemption from the Missouri Tenets and Missouri Lectionary in the good faith exercise of her sincerely held religious beliefs. The Court must accept as true her allegations that her payment of the expenses forced upon her by the Missouri Lectionary violated her sincerely held religious beliefs that "she alone decides . . . when and how to proceed with an abortion and she "must not support religious, philosophical or political beliefs that imbue Fetal Tissue with an existence separate, apart or unique from her body" or "promote the idea Fetal Tissue is a human being." Second Am. Pet. at ¶27(d), (f) and (h).

If a secular act is engaged in—or abstained from–for religious reasons then it is the "exercise of religion." A witness' refusal to affirm the truth of her testimony for religious reasons is the exercise of religion. *Ferguson v. C.I.R.*, 921 F.2d 588 5th Cir. 1991). The Amish refusal to pay social security taxes on religious grounds is the exercise of religion. *United States*

v. Lee, 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982). The Amish refusal to have their children attend public school on religious grounds is the exercise of religion. *Wisconsin v. Yoder*, 406 U.S. 205, 216, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Many other secular acts are the exercise of religion when done for religious reasons including, but not limited to, killing chickens (*Lukumi*); killing goats (*Merced v. Kasson*, 577 F. 3d 578 (5th Cir. 2009)); wearing beads (*Davila*) and refusing a blood transfusion (*Brown, In re*, 478 So.2d 1033 (Miss. 1985)). Plaintiff has just as much right under the Free Exercise Clause to get an abortion in a time and manner of her own choosing—as is required by her religious belief—as other citizens have to testify in court, kill livestock, wear beads or go to school in a time and manner required by their religious beliefs. Plaintiff has just as much right under the Free Exercise Clause to refuse to pay for the Missouri Lectionary for religious reasons as other citizens have to refuse a blood transfusion or pay social security taxes for their religious reasons.

Engaging or refusing to engage in a secular act is the "exercise of religion" when required by one's religious belief that a "human being" commences at conception. *Hobby Lobby*, 134 S. Ct. 2751 at 2770 ("[T]he exercise of religion involves not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons. Business practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within that definition." [internal quotations and citations omitted]). It necessarily follows that engaging or refusing to engage in a secular act is also an "exercise of religion" when required by one's religious belief that non-viable fetal tissue *in utero* is not a "human being" and can be removed on demand and in good conscience without consideration of its current or future condition.

In *Hobby Lobby*, the Supreme Court held the owners of a business could not be compelled to make abortifacients available to their employees because compliance with such a law violated the owner's religious belief that a "human being" comes into existence at conception and using an abortifacient is murder. Plaintiff has just as much right to seek an exemption from the Missouri Tenets and Missouri Lectionary because they are contrary to her religious beliefs as the *Hobby Lobby* owners had to seek an exemption from buying abortifacients that are contrary to their religious beliefs. Plaintiff has as much right to refuse to incur the expenses of the Missouri Lectionary for religious reasons as the Hobby Lobby owner had to refuse to pay for abortifacients for religious reasons. The Free Exercise Clause and RFRA are violated in both cases by forcing upon plaintiffs a Hobson's Choice between acting in a manner required by their religious beliefs about when a "human being" comes into existence and compliance with the law.

The Missouri Lectionary and Missouri Tenets Violate the Free Exercise Clause.

Citing *Employment Div. Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) ("*Smith*"), Defendants argue the Missouri Tenets and Missouri Lectionary are "neutral laws of general applicability" and therefore do not violate the Free Exercise Clause. Defendants' Motion at p. 16. The plain meaning of the Missouri Tenets and the Missouri Lectionary controls whether they are content neutral for purposes of the Free Exercise Clause. *Phelps-Roper v. Koster*, 713 F. 3d 942, 950 (8th Cir. 2013). That meaning is derived from the language of the statute and its context. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) ("*Lukumi*") ("A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.").

Defendant's reliance on *Smith* is misplaced because The Missouri Tenets and

Missouri Lectionary are not "content neutral" but rather are "an impermissible state adoption of a theory when life begins" with no discernible secular purpose.

Nor are the Missouri Lectionary and Missouri Tenets generally applicable laws. They apply only to a very narrow and targeted subset of the general population—women seeking abortions. They do not apply to men, non-pregnant women or women who chose to not have an abortion.

Since the Missouri Tenets and Missouri Lectionary are not content-neutral or generally applicable laws, they must be narrowly drawn to serve state interests of the highest order. *Lukumi* 508 U.S. at 546 (1993). Defendants have made no such showing.[7]

The Missouri Lectionary and Missouri Tenets Violate RFRA.

For all the reasons previously stated, the Missouri Tenets and Missouri Lectionary infringed upon Plaintiff's exercise of her religious beliefs in violation of RFRA.

Conclusion.

For the reasons set forth above, Plaintiff submits the Missouri Tenets and Missouri Lectionary violate the Establishment Clause, Free Expression Clause and RFRA and the motion to dismiss must be denied.

October 21, 2016

[7] And even if the Missouri Lectionary and Missouri Tenets were neutral laws of general application, they still be subject to a strict scrutiny standard for their violation of the Free Exercise Clause because they impact Plaintiff's rights under the First Amendment while she exercised her privacy rights under ***Roe v. Wade***, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). *Watchtower Bible & Tract Soc. of N. Y., Inc. v. Village of Stratton*, 536 U.S. 150, 159, nt.8 (2002) (The "First Amendment bars application of a neutral, generally applicable law to religiously motivated action [involving] Free Exercise Clause in conjunction with other constitutional protections.").

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CERTIFICATE OF SERVICE

I certify that on October 21, 2016, a true and correct copy of the above and foregoing was eFiled thus served by email to all registered counsel of record, and was also served by U.S. Mail to the following defendants:

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