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22<sup>ND</sup> JUDICIAL CIRCUIT  
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STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

The Reverend Traci Blackmon, *et al.*, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
State of Missouri, *et al.*, )  
 )  
Respondents. )

Case No. 2322-CC00120  
Division No. 18

JUDGMENT AND ORDER

The Court has before it the Motion to Dismiss of Respondent Prosecuting Attorneys Roger Johnson, Daniel Patterson, Theresa Kenney, and Joseph McCulloch (“Respondent Prosecutors”).<sup>1</sup> The Court now rules as follows.

On January 19, 2023, Petitioners brought this case seeking, among other things, injunctive and declaratory relief regarding the restriction and regulation of abortions in Missouri. Petitioners were granted leave to file their First Amended Petition on March 27, 2023. In their First Amended Petition, Petitioners challenge several statutory abortion restrictions, including Sections 188.017, 188.021(2), 188.027, 188.038, 188.039, 188.056, 188.057, 188.058, 188.065, 188.075, and 188.375 RSMo (“the Challenged Provisions”), and seek both a declaration that they violate the Missouri Constitution’s Establishment Clauses and an injunction against their enforcement.

Petitioners include the Reverend Traci Blackmon, the Reverend Barbara Phifer, Maharat Rori Picker Neiss, the Reverend Molly Housh Gordon, the Right Reverend Deon K. Johnson—

<sup>1</sup> The prosecuting attorneys in Jackson County and the City of St. Louis did not join in this motion.

Eleventh Bishop of the Episcopal Diocese of Missouri, Rabbi James Bennett, the Reverend Holly McKissick, the Reverend Krista Taves, the Reverend Cynthia S. Bumb, Rabbi Susan Talve, Rabbi Douglas Alpert, the Reverend Janice Barnes, Rabbi Andrea Goldstein, and the Reverend Darryl Gray. Petitioners are all suing in their capacity as Missouri taxpayers alleging the Challenged Provisions' violate their rights under Article I, Sections 5, 6, and 7 of the Missouri Constitution. In addition, Petitioner Reverend Molly Housh Gordon ("Housh Gordon") is suing based on the alleged substantial risk of harm she faces as a woman of reproductive age arising from the Challenged Provisions.

The Respondents relevant to this Motion to Dismiss include: Roger Johnson, who is the Prosecuting Attorney for Boone County, Daniel Patterson, who is the Prosecuting Attorney for Greene County, Theresa Kenney, who is the Prosecuting Attorney for Jasper County, and Joseph McCulloch, who is the Prosecuting Attorney for St. Charles County. Petitioners seek to enjoin Respondent Prosecutors from enforcing the Challenged Provisions.

Respondent Prosecutors have filed the instant Motion to Dismiss Petitioners' First Amended Petition against them for failure to state a claim. First, they contend an injunction will not lie to enjoin prosecutors from the prosecution of duly enacted criminal statutes, unless and until the statutes are held unconstitutional. Further, Respondent Prosecutors contend there is no justiciable controversy between any Petitioner and any of the Respondent Prosecutors, that there is no pending or threatened prosecution of any Petitioner or other person for violation of any of the Challenged Provisions, and that further, no Petitioner is in a class of individuals that may even be subject to prosecution for any criminal violation of the Challenged Provisions. Thus, no Petitioner has standing to seek the injunctive relief against Respondent Prosecutors.

In addition, Respondent Prosecutors contend this issue is not ripe and will not become ripe because Petitioners, with the exception of Housh Gordon, have not alleged that they are of reproductive age, so they cannot violate the law. Moreover, with respect to Housh Gordon, even if she does violate the law by seeking and obtaining an abortion, she cannot be subject to prosecution by Respondent Prosecutors.

A motion to dismiss for failure to state a claim on which relief can be granted under Rule 55.27(a)(6) is solely a test of the adequacy of the petition. Bromwell v. Nixon, 361 S.W.3d 393, 398 (Mo. banc 2012). The Court assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. banc 2001). No attempt is made to weigh any facts as to whether they are credible or persuasive. Id. Instead, the petition is reviewed to see whether the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. Id.

Missouri is a fact pleading state. Jones v. St. Charles County, 181 S.W.3d 197, 202 (Mo. App. 2005). "This requires that a petition contain a short and plain statement of facts to show the pleader is entitled to relief." Id. "Although the petition does not have to plead evidentiary or operative facts showing an entitlement to the relief sought, it must plead ultimate facts demonstrating such an entitlement and cannot rely on mere conclusions." Brock v. Blackwood, 143 S.W.3d 47, 56 (Mo. App. W.D. 2004).

Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action. E. Missouri Laborers Dist. Council v. St. Louis Cnty., 781 S.W.2d 43, 45-46 (Mo. banc 1989). Standing requires that a party seeking relief have a legally cognizable interest in the subject matter and that she has a threatened or actual injury. Id. In

addition, a plaintiff must have an actual and justiciable interest susceptible of protection. Metro Auto Auction v. Dir. of Revenue, 707 S.W.2d 397, 400 (Mo. banc 1986). The doctrine of standing is related to the doctrine which prohibits advisory opinions. Id.

“Generally, courts of equity are without jurisdiction to enjoin enforcement of criminal statutes.” Burnau v. Whitten, 642 S.W.2d 346 (Mo. banc 1982). However, Missouri courts recognize an exception to this general rule “[w]hen the criminal law in question is unconstitutional or otherwise invalid and attempted enforcement would directly invade a property right causing irreparable injury, equity will enjoin enforcement of the offending statute.” Id. “In order that this exception apply, the elements of statutory invalidity and irreparable injury must clearly appear.” Id.; See also State ex rel. Eagleton v. McQueen, 378 S.W.2d 449, 453-54 (Mo. banc 1964); Cimasi v. Fenton, 659 S.W.2d 532, 536 (Mo. App. E.D. 1983).

In this case, Petitioners allege that they oppose the Challenged Provisions based on their individual religious beliefs, traditions, and commitments. Petitioners claim that the Challenged Provisions are an unconstitutional establishment of religion by the State of Missouri. Petitioners allege that they suffer the injury to the public interest flowing from taxes being expended on the unconstitutional establishment of religion. In addition, Petitioner Housh Gordon alleges that the Challenged Provisions put her life, health, and well-being at risk because they adversely impact her ability to obtain abortion care. Petitioner Housh Gordon suffers from auto-inflammatory and other medical issues that cause a high likelihood of severe pregnancy-related complications, and pregnancy would create a substantial risk to her life and well-being.

However, the Court finds that Petitioners have not sufficiently alleged an exception to the general rule that an injunction will not lie to enjoin prosecutors from the prosecution of duly

enacted criminal statutes. First, it is not clear that the Challenged Provisions are unconstitutional or otherwise invalid. Second, it is not clear that attempted enforcement would directly invade a property right causing irreparable injury.

The Challenged Provisions provide for the criminal prosecution of people who knowingly perform or induce the abortion of an unborn child, but they specifically provide that a woman that receives an abortion is protected from prosecution. See e.g. Sections 188.017.2, 188.056.1, 188.057.1, 188.058.1, and 188.375.3 RSMo. Petitioners do not allege that they intend to perform or induce abortions. As a result, there is no imminent risk of criminal prosecution to Petitioners because the statutes in question either do not provide for any criminal liability for the woman undergoing an abortion or contain a provision, which explicitly states 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. See the Challenged Provisions.

Further, Respondent Prosecutors contend this issue is not ripe and will not become ripe because Petitioners, except for arguably Housh Gordon, cannot violate the law. Moreover, with respect to Housh Gordon, even if she could be involved in a violation of the law by seeking and obtaining an abortion, she is not subject to prosecution by Respondent Prosecutors. Thus, Petitioners cannot allege that the Challenged Provisions directly invade their property rights, causing irreparable injury. As a result, the Court finds Petitioners do not have an actual and justiciable interest susceptible of protection as against Respondent Prosecutors.

Even assuming *arguendo* that the mere existence and potential enforcement of the Challenged Provisions constitutes a violation of the Missouri Constitution's Establishment Clause, such a violation is not cognizable against Respondent Prosecutors because they did not enact the

laws nor did they or can they enforce them directly against Petitioners. Thus, if anything, Respondent Prosecutors could only indirectly violate the rights of Petitioners through the potential to enforce or the actual enforcement of the Challenged Provisions by Respondent Prosecutors against doctors or medical professionals. Such an indirect injury is not sufficient for injunctive relief. Similarly, while the injury alleged by Petitioner Housh Gordon is very serious as it is a potential danger to her life, it is an injury that is, at best, only indirectly caused by Respondent Prosecutors role in enforcing the Challenged Provisions. Such potential injuries to Petitioners and to Housh Gordon provide insufficient bases for the Court to enjoin enforcement of a criminal statute.

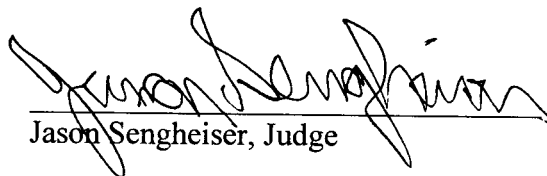
The relief sought against the Respondent Prosecutors is purely injunctive. Accordingly, the Court finds that it must grant Respondent Prosecuting Attorneys' motion to dismiss.

JUDGMENT

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Respondent Prosecuting Attorneys' Roger Johnson, Daniel Patterson, Theresa Kenney, and Joseph McCulloch's Motion to Dismiss is hereby GRANTED.

Petitioners' First Amended Petition is hereby dismissed against Respondent Prosecuting Attorneys' Roger Johnson, Daniel Patterson, Theresa Kenney, and Joseph McCulloch. The prosecuting attorneys in Jackson County and the City of St. Louis remain in this case.

SO ORDERED:

  
Jason Sengheiser, Judge

Dated: June 30, 2023