A Summary of the Laws on Abortion in Missouri

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I. INTRODUCTION

The most important rules of abortion law have been imposed on the United States by the U. S. Supreme Court under the guise of interpreting the United States Constitution. The statute books merely contain regulations on abortion that the courts have deigned to allow the people's representatives to enact so long as the constitutional right to abortion is not unduly burdened.

Part I of this summary describes the basics of abortion law under current Supreme Court decisions. No attempt is made here to predict how the Supreme Court will rule in the future on any of these points. Part II will describe Missouri laws that regulate different aspects of abortion.

II. BASICS OF ABORTION LAW

1. Abortion cannot be prohibited at any stage of pregnancy if "health" of the mother is invoked. If a doctor will say that an abortion is for the mother's health, it is legal through all nine months of pregnancy under *Roe v. Wade,* 410 U.S. 113 (1973), and *Doe v. Bolton,* 410 U.S. 179 (1973). For this purpose, the term, "health," includes many social and psychological factors, not just physical factors that people usually associate with medical conditions. *Doe v. Bolton,* 410 U.S. at 192. Whether or not an unborn child is viable (except in the case of partial birth abortions), the "health of the woman" will allow an abortion to be performed. *Planned Parenthood v. Casey,* 505 U.S. 833, 879 (1992); *Ayotte* v. *Planned Parenthood*, 546 U. S. 320 (2006).

2. The current legal standard for constitutionality of abortion statutes is the "undue burden" standard. Except in cases where the health of the woman is at risk, state legislatures and Congress may regulate abortions so long as the regulations do not impose an "undue burden on a woman's ability to make this decision [for abortion]." *Planned Parenthood v. Casey,* 505 U.S. 833, 874-78 (1992).

What is an "undue burden"? Ultimately, what constitutes an "undue burden" depends on what a majority of the Supreme Court may think at any particular time. Its most recent thinking is found in this excerpt:

> '[A] statute which, while furthering [a] valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends.' *Casey,* 505 U.S. at 877 (plurality opinion). Moreover, '[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.' *Id.* at 878.

Whole Women's Health v. Hellerstedt, 136 S.Ct. 2292, 2309 (2016).

Hellerstedt invalidated certain Texas laws requiring that clinics meet certain health and safety standards. In the absence of evidence that the regulations actually would improve the safety of abortions in Texas, and in view of the very long distances that women in some parts of Texas would have to go for an abortion at one of the remaining open clinics, the Court held that the laws constituted an undue burden to Texas women seeking abortion. The principles of that ruling were reaffirmed in 2020 in *June Medical Services v. Lee*, 140 S.Ct. 2103 (2020).

3. Only partial-birth abortions may be banned categorically. The Supreme Court upheld the constitutionality of the federal ban on partial-birth abortions in 2007. *Gonzales v. Carhart,* 550 U.S. 124 (2007). Missouri prohibits partial-birth abortions. Section 565.300, RSMo. (All citations of statutes are to the Revised Statutes of Missouri ("RSMo.") effective as of August 28, 2020, unless otherwise indicated.) With the medical profession divided on whether partial-birth abortions are ever necessary for a woman's health and in view of the availability of other late-term abortion methods, the Court found that such a ban was not an undue burden on the right to abortion. Other methods of abortion may not be prohibited *per se* under current court decisions.

In 2019, Missouri enacted an omnibus law (HB 126) that attempts to ban abortions at three different gestational ages (8 weeks, 14 weeks, and 18 weeks) in the hope that the courts will allow at least one. The omnibus statute also bans all abortions performed because an unborn child is diagnosed with Down Syndrome or because of race. Sections 188.038, 188.056, 188.057, 188.058, & 188.375 (HB 126, 2019). These provisions of the statute were temporarily enjoined by a federal court. *Reproductive Health Services of Planned Parenthood of the St. Louis Region v. Parson,* case no. 2:19-cv-4155 (W.D.Mo. Aug. 27 and Sept. 27, 2019). The State appealed, and at the time of this writing, the appeal is under submission in the U. S. Court of Appeals for the Eighth Circuit. *Reproductive Health Services of Planned Parenthood of the St. Louis Region v. Parson,* appeal no. 19-2882 (8th Cir., argued & submitted Sept. 24, 2020). A decision may be handed down at any time.

4. Only the woman has legal rights in the abortion decision. No one besides the pregnant woman has any legal say in whether or not an unborn child is aborted. *Planned Parenthood v. Danforth,* 428 U.S. 52 (1976). The father of the baby, even if married to the mother, need not be told before or afterward. *Planned Parenthood v. Casey,* 505 U.S. 833, 879 (1992). If the mother of the baby is a minor, a law may require parental consent, except that the law must contain an exception to allow the minor to go to court without notice to parents or guardians in order to obtain an order for an abortion (the "judicial bypass"). *Hodgson v. Minnesota,* 497 U.S. 417 (1990); *Ayotte* v. *Planned Parenthood*, 546 U. S. 320 (2006).

5. Aborting Viable Children. The state cannot stop the abortions of viable children if they are done to promote women's health, as noted above. Missouri's more restrictive statute, sec. 188.030.1, allows abortions of viable children only if the mother's life is endangered by a physical condition or a doctor finds a serious risk of substantial and irreversible physical impairment of a major bodily function if the pregnancy continues. Although this statute is apparently more restrictive than *Doe v. Bolton* allows, it has not been challenged in court, so it is in effect.

The state cannot require that the abortionist use an abortion method best designed to allow for a viable baby's survival because that may impinge on a woman's health. *Colautti v. Franklin*, 439 U.S. 379 (1979). Missouri takes account of *Colautti* by providing that if an abortion is performed on a third-trimester unborn child, the abortionists shall use the technique most likely to preserve the life and health of the child, unless it would present a greater risk to the life or health of the mother. Section 188.375.6.

III. MISSOURI STATUTES REGULATING ABORTION AND COURT RESTRICTIONS THEREOF

Here are summaries of most pro-life laws that have been subjected to the scrutiny of federal courts. Over the years, Missouri has enacted many statutes that regulate abortions, but all are subject to the limitations described above. Space prevents offering a comprehensive list of Missouri's abortion laws. Interested readers may consult chapters 188, RSMo. (abortion) and sections 190.200-190.240, RSMo. (ambulatory surgical centers) for more particulars. Although the list may seem lengthy, the reader should keep in mind that the general rule of abortion jurisprudence remains unaffected by these laws: if a doctor is willing to perform the abortion for a woman's "health," however the doctor chooses to define it, then unless it is a partial-birth abortion, it is legal through all nine months of pregnancy. (See Part II above.)

There is no telling whether the new makeup of the Supreme Court as of the end of 2020 will result in any change in the Court's "undue burden" jurisprudence outlined above.

A. Permission of Parents of a Minor Before an Abortion is Performed

1. Parental permission for a teenager's abortion may be required so long as there is an option for a judicial bypass. The permission of at least one parent (or legal guardian) is required for a minor to obtain an abortion. Section 188.028. The custodial parent is obligated to notify the other parent of the proposed abortion if the other parent has custodial rights (e.g., joint custody). However, the U. S. Supreme Court requires that there must be an alternative in state law that allows a minor to go to court (a "judicial bypass") for an order allowing an abortion if she does not want to involve the parents. *Ayotte* v. *Planned Parenthood*, 546 U. S. 320 (2006); *Hodgson v. Minnesota,* 497 U.S. 417 (1990); *Planned Parenthood v. Ashcroft*, 462 U.S. 476 (1983). Missouri has adopted a judicial bypass procedure in sec. 188.028.2.

2. The state may not require notice to parents of their daughter's judicial bypass. If a judicial bypass is utilized, the state cannot require that the minor's parents be notified of the court hearing at which the proposed abortion will be at issue. *Ashcroft*, 462 U.S. at 491 n.17.

3. Evading the requirements. If someone assists a minor to evade the requirements of

consent or bypass under sec. 188.028, he or she is liable for damages in a lawsuit by the minor's parents or legal guardians. Section 188.250.

B. Notice to the Baby's Father Before an Abortion is Performed

1. No consent of husband. The State cannot require a husband's permission before a wife has an abortion. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976).

2. No notice to husband. The state may not even require simple notice to a husband before a wife has an abortion. According to the Supreme Court, the incidence of spouse abuse makes such notice dangerous and thus too substantial a burden on obtaining an abortion to be constitutional. *Planned Parenthood v. Casey*, 112 S.Ct. 2791, 2826-2832 (1992).

3. Unmarried fathers. Unmarried fathers have no more standing in regard to the abortion of their child than married fathers have.

C. Providing Information to Women Before Abortion

1. Information for surgical abortions. The Supreme Court allows a state to require certain information to be offered to women before an abortion. *Casey*, 112 S.Ct. at 2822-2826. Accordingly, Missouri has enacted detailed requirements for providing such information. Section 188.027. Missouri requires the information to be provided by the physician who will perform the procedure, a "qualified professional," or the referring physician. *Id.* The woman must be given the opportunity to view an ultrasound of her baby. *Id.* She must also be given information on the gestational age and development of her unborn child, told about the father's liability for support of the unborn child, and provided information about alternatives to abortion services available to her. *Id.*

2. Requirements for prescription abortions. Missouri law also provides certain procedures to govern abortions by prescription drugs. When the initial dose is administered, it must be done in the presence of the prescribing abortionist. Section 188.021.1. When the FDA label for the abortifacient drug indicates that more than one percent of women who took it required surgical care afterward, the prescribing physician must obtain pre-approval of a "complication plan" from the Missouri Department of Health and Senior Services. Section 188.021.2. The rules for providing information remain the same for prescription abortions as for surgical abortions. Section 188.027.

3. 72-hour reflection period. For surgical abortions, the information described above must be presented to the woman at least 72 hours before the abortion takes place.

Section 188.039.1. For prescription drug abortions, the reflection period is 72 hours before issuing the prescription for the drug. Section 188.039.2. The courts have upheld the information requirements and reflection period. *Judy Doe v. Parson,* 960 F.3d 1115 (8th Cir. 2020); *Doe v. Parson,* 567 S.W.3d 625 (Mo. banc 2019).

D. Health and Miscellaneous Regulations

1. Physicians required. The state may require that abortions be performed by physicians and not by obstetrical nurses or other non-doctors. *Roe v. Wade*, 410 U.S. 113 (1973); *Mazurek v. Armstrong*, 117 S. Ct. 1865 (1997). Missouri has done so in secs. 188.020 and 334.245.

2. Medical malpractice insurance. Abortionists must maintain malpractice insurance of at least $1,000,000.00 per occurrence and $3,000,000 in the aggregate. Section 188.043.

3. Clinical privileges at a nearby hospital. Missouri requires abortionists to have clinical privileges at a hospital that provides obstetrical or gynecological care within thirty miles of where a surgical abortion is performed. Section 188.080. For several years, regulations under the Ambulatory Surgical Center law required abortionists to have surgical privileges at a hospital that was no more than 15 minutes away. Section 197.215.1(2); 19 CSR 30-30.060(1)(C)(4). Until the *Hellerstedt* decision in 2016, the clinical privileges requirement was not in question. Soon after *Hellerstedt*, it was challenged by Planned Parenthood. The U. S. District Court for the Western District of Misssouri entered a preliminary injunction against the State. *Comprehensive Health Services of Planned Parenthood Great Plains v. Williams,* case no. 2:16-cv-04313 (W.D.Mo. 2016). The Court of Appeals reversed the District Court, holding that *Hellerstedt* did not automatically invalidate such requirements in every state. *Comprehensive Health Services of Planned Parenthood Great Plains v. Hawley,* 950 F.3d 750 j(8th Cir. 2018). The District Judge erred in assuming so and then denying the admission of evidence that indicated how the requirement benefited women's health. *Id.* On remand, Planned Parenthood dismissed its case without prejudice. *Comprehensive Health Services of Planned Parenthood Great Plains v. Hawley,* case no. 2:16-cv-04313 (W.D.Mo. Aug. 13, 2019). The case could be refiled at any time.

4. State may not require abortions to be performed in hospitals. Although hospital privileges may be required of abortionists, the state may not require that all abortions in the second trimester be performed in a hospital. *Planned Parenthood v. Ashcroft*, 462 U.S. 476 (1983). The state may not require that all abortions performed after the gestational age of 16 weeks be performed in a hospital. *Reproductive Health Services v. Webster*, 851 F.2d 1071, 1073-74 (8th Cir. 1988). (This portion of the Court of Appeals' decision was not appealed to the Supreme

Court. *Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3044 (1989).)

5. State may require procedures to enhance women's health. The state may require that abortion clinics be licensed and meet minimum reasonable health regulations. *Simopoulos v. Virginia*, 462 U.S. 506 (1983). The abortion statutes of Missouri (chapter 188, RSMo.) include such requirements as (1) written consent to be obtained for the abortion, with lengthy lists of information to be provided by the abortion clinic or physician that are intended to make the consent to be truly "informed consent," sec. 188.027; (2) testing for viability of the infant if he or she appears to be 20 weeks in development or older, sec. 188.030; (3) abortionists to complete abortion report for each one performed, sec. 188.051.1; (4) complication reports required for all post-abortion care by a physician, sec. 188.051.2; (5) in the case of any abortion facility, the department shall make or cause to be made an unannounced on-site inspection and investigation at least annually, sec. 197.230.2; (6) state department of health to collect such reports and to publish annual statistical report on abortions, sec. 188.051.5; and (7) submission of tissue to pathologist to confirm abortion, sec. 188.047.

6. Ambulatory surgical center regulations. Missouri law was amended in 2007 to provide that all abortion clinics must comply with very detailed ambulatory surgical center (ASC) regulations. Section 197.225; 19 CSR 10-15.010-15.050. However, litigation by abortionists resulted in a settlement that substantially curtailed the application of surgical center regulations for non-surgical locations of abortion organizations where no surgeries are done but where abortions drugs are dispensed. *Planned Parenthood of Kansas & Mid-Missouri v. Drummond,* case no. 07-4164 (U. S. District Court, W.D. Mo.).

   Unfortunately, when the Missouri Department of Health attempted to terminate the license of the Planned Parenthood clinic in St. Louis for numerous, documented violations of the ASC regulations, the Administrative Hearing Commission stopped the State from doing so. According to news sources, the Commissioner who issued the decision wrote, "Although we found violations of two provisions of law, we cannot deny Planned Parenthood's license because those findings do not constitute substantial failures to comply with [Missouri law]." (Note that the Commissioner did not find 2 *violations*; he found 2 *laws* that had been violated. The quote did not reveal how many times the violations occurred.)

7. Reporting rape and sexual assault. An abortionist, like other medical personnel, is now required to report to the proper authorities any case in which he or she has prima facie evidence of a minor suffering statutory rape, forcible rape, sexual assault, or incest. Section 188.023.

E. Public Facilities And Funding

1. Government funding not required by federal constitution. The federal constitution does not compel government to fund abortions through Medicaid or any other program. *Harris v. McRae*, 448 U.S. 297 (1980); *Beal v. Doe*, 432 U.S. 438 (1977); *Maher v. Roe*, 432 U.S. 464 (1977).

2. Some state constitutions require government funding—the threat of an ERA. The courts of some states which have "right to privacy" or "ERA" (Equal Rights Amendment) language in their state constitutions have ruled that the state constitutions therefore require the state to fund abortions. The New Mexico Supreme Court construed its state ERA in this way. *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (N.M. 1998), *cert. denied*, 119 S.Ct. 1256 (1999). Missouri has no such language in its state constitution, but strong efforts are under way to ratify the federal ERA. It is believed a federal ERA would not only require funding of abortions but would also strike down most other regulations on abortion, if not all.

3. Hyde Amendment. The "Hyde Amendment" long has been an annual restriction in Medicaid appropriations that prohibited the use of federal money to pay for abortions except in the following circumstances:

   (1) if the pregnancy is the result of an act of rape or incest; or

   (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

   Further Consolidated Appropriations Act, 2020, H.R. 1865, Div. A, Title II, §§ 506-507, Pub.L. 116-94 (2019). Stricter state restrictions on Medicaid funding of abortion, such as sec. 208.152.1(12), RSMo., cannot be enforced, because federal law trumps any conflicting state laws. Missouri is under a federal injunction against enforcing sec. 208.152.1(12) that dates from 1994. *Stangler v. Shalala,* 1994 WL 764104 (Order Granting Summary Judgment, W.D. Mo. Dec. 28, 1994).

   The Hyde Amendment from the beginning has contained a large loophole for chemical abortions using so-called “morning after” pills (e.g., “Plan B,” “Ella”). Federal regulations define pregnancy as beginning with implantation, not when the life of the little human being begins. 42 CFR sec. 441.207. There is a difference of approximately a week between conception and implantation. When the young human is ready to implant in the wall of the mother's uterus, he or she consists not of one or two cells, but 200-250 cells (National Institutes of Health, *Stem Cell Information: Appendix A: Early Development,* last accessed March 16, 2021, at https://stemcells.nih.gov/info/2001report/appendixA.htm), and he or she is already

beginning a self-directed process of cell differentiation and growth requiring an increase in nutrients that implantation will allow him or her to receive. When a drug operates by preventing implantation, as the "morning after" drugs sometimes do, it causes an abortion because the little human cannot implant and dies. In this way, Medicaid pays for some non-surgical abortions.

4. State Child Health Insurance Program. In 1997, the federal government enacted a program of subsidizing state insurance programs for children's health, commonly referred to as "SCHIP" programs. (In Missouri, "HealthNet for Kids.") Funding of abortion in such programs has been barred under the Hyde Amendment, with exceptions for the mother's life, rape, and incest.

5. Missouri has refused to provide state resources for abortions. In 1986, Missouri enacted abortion statutes which forbade the state to support abortions in the following ways under Sections 188.205-.215, RSMo.:

   - No state money is to be used (i) for performing or assisting an abortion not necessary to save a woman's life or (ii) for encouraging or counseling a woman to have an abortion that is not necessary to save her life. Section 188.205.

   - No state employees in the course of their employment are (i) to perform or assist abortions except abortions performed to save a woman's life or (ii) to encourage or counsel a woman to have an abortion not necessary to save her life. Section 188.210.

   - No state facilities are to be used (i) for performing or assisting an abortion not necessary to save a woman's life or (ii) for encouraging or counseling a woman to have an abortion that is not necessary to save her life. Section 188.215.

   These statutes address what resources are involved (money, employees, and facilities) and what particular behavior is barred (performing or assisting an abortion; encouraging or counseling for an abortion). All three are constitutional as applied to performing or assisting in abortions. *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989).

   However, the portions of the three statutes that address using public resources to "encourage or counsel" for abortions were either neutered or were not appealed. They are of no effect in regard to encouraging or counseling for abortions. In regard to the first statute on using state money for that purpose (sec. 188.205), the Attorney General told the Supreme Court that the statute "was not directed at the conduct of any physician or health care provider, private or public," but "is directed solely at those persons responsible for expending public funds"--in other words, at those who write and sign government checks. In light of this authoritative

interpretation, Reproductive Health dropped its claims about the unconstitutionality of the provision from further consideration. *Webster*, 109 S. Ct. 3053.

In regard to the second and third statutes on state employees assisting in encouraging or counseling for abortions or using state facilities for that purpose, the Attorney General did not appeal the adverse decision from the Court of Appeals. Thus, the Supreme Court was not presented the opportunity to reverse the lower courts on these points. *Webster*, 109 S. Ct. at 3044.

The state could, if it wished, enact new restrictions on the use of state funds for these purposes, because two years after the *Webster* decision, the Supreme Court ruled that such restrictions were constitutional. *Rust v. Sullivan,* 111 S.Ct. 1759 (1991). To date, the General Assembly has not enacted other restrictions on the use of state employees and facilities for encouraging or counseling for abortions.

6. Refusing to give family planning contracts to abortionists. Once the government funds a health program, the cases indicate that the government cannot disqualify an organization from participating in the program on the ground that the organization advocates or performs abortions. *Babbitt v. Planned Parenthood*, 479 U.S. 925 (1986), affirming *Planned Parenthood v. Arizona*, 789 F.2d 1348 (9th Cir. 1986); *Planned Parenthood v. Minnesota*, 612 F.2d 359 (8th Cir. 1980); *Planned Parenthood v. Kivlahan*, Amended Order (W.D. Mo. June 27, 1996).

   However, a statute which provides that an abortion-performing organization may not receive public family planning money directly, but can only use a subsidiary or affiliate which does not share the corporate name or the same employees, funding sources, or expenses, will survive constitutional scrutiny. *Planned Parenthood of Mid-Missouri and Eastern Kansas v. Dempsey*, 167 F.3d 458 (8th Cir. 1999). (Such state laws cannot be applied to Medicaid, because the federal government writes the law on Medicaid, and state laws cannot override federal laws.) If written correctly, such a law will tie up the public's money so that the abortion-performing organization does not benefit from it, even indirectly.

7. Refusal to allow abortionists to supply certain instruction in schools. Missouri forbids public school districts and charter schools, and their personnel, from providing abortion services (which include encouraging a patient to have an abortion or referring a patient for an abortion, which is not necessary to save the life of the mother) and from permitting any provider of abortion services to offer any course materials or instruction relating to human sexuality or sexually transmitted diseases. Section 170.015.7 & .8. The statute lacks a provision that would permit parents to sue schools that violate the law.

8. Exception for inmates. When the Missouri Department of Corrections changed its policy in 2005 and thereafter refused to provide medical releases for female inmates who wanted abortions, the federal courts ruled that Missouri violated the

inmates' rights. *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008). The State was not ordered to pay for the abortion but only to allow the inmate a medical release. It was implied that if the State intends to keep an inmate under guard (as it must), then the cost of transportation is on the State.

F. Conscience Clauses In Missouri Law

1. Protection from discrimination in employment. No one may be discriminated against in employment or applications for employment because of a refusal to participate in an abortion, unless an employer cannot accommodate an employee's refusal "without undue hardship on the conduct of that particular business or enterprise," or "when participation is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." Section 188.105, RSMo. Since "abortion" is defined as using or prescribing any means or substance "with an intent" to destroy an embryo or fetus in his or her mother's womb or the "intentional" termination of the pregnancy of a mother in sec. 188.015(1), the conscience protection statute, sec. 188.105, does not protect an employee of a pharmacy from repercussions if the employee refuses to dispense a "morning after" pill (e.g., "Plan B," "Ella"). The reason? "Morning after" pills are often abortifacients, but not always, so one cannot prove that there was the "intent" to destroy an embryo or the "intentional" termination of pregnancy.

2. Protection from discrimination in colleges & hospitals. No one at a university, college or hospital may be discriminated against for refusal to participate in an abortion, and no fees may be exacted at any school to fund abortion if an individual gives written notice of an objection of conscience or belief. Section 188.110, RSMo.

3. Protections for physicians, nurses, midwives, hospitals. No physicians, registered nurses, practical nurses, midwives, or hospitals are required to treat or admit for treatment any woman for the purpose of abortion if contrary to their established policies or their "moral, ethical, or religious beliefs." Section 197.032.1, RSMo. There are no similar protections for pharmacists, and no protections for those who refuse to provide prescriptions that may often, but not always, act as abortifacients.

4. Protection from discrimination in public benefits. No person or institution may be denied or discriminated against in state public benefits, assistance, or privileges, or in any public or private employment, "on the grounds that they refuse to undergo an abortion, to advise, consent to, assist in or perform an abortion." Section 197.032.2, RSMo.

5. Lawsuits for violations. A violation of sections 188.105-188.110 exposes the violator to liability for damages in a civil action. Sections 188.120, 197.032.3,

RSMo. In addition, any violation of Sections188.105-188.110 above results in trebling the damage award, plus the award of attorneys' fees and costs. Section 188.120, RSMo.

6. 2012 conscience clause law for health insurance. In 2012, the General Assembly attempted to protect persons and corporate entities, especially employers, from being forced to provide to employees and others any health coverage for abortions, contraceptives, and sterilizations, if the moral principles of a business or its owners forbid it. Section 376.1199.4(1)-(3). (Section 191.724 is to the same effect.) The statute also protected individuals from being forced to purchase the same types of coverage, if their consciences forbid it. Id. The statute was quickly found unconstitutional because it conflicts with the federal Affordable Care Act ("Obamacare"), and federal law trumps state law under the U. S. Constitution's Supremacy Clause. *Missouri Insurance Coalition v. Huff*, 947 F.Supp.2d 1014 (E.D. Mo. 2013).

G. Eugenics; Utilitarian Abuses Of Unborn Children

1. No referrals for abortions by genetic clinics. No genetic diagnostic and counseling clinic may refer for an abortion unless a physician certifies that the life of the mother is endangered. Section 191.320, RSMo.

2. Experimentation on unborn children. Missouri law forbids experimentation on a living unborn child or a child aborted alive, except as necessary to protect or preserve the life and health of the child. Section 188.037, RSMo. However, under Amendment 2 of 2006, now classified as Article III, sec. 38(d) of the Missouri Constitution, if unethical scientists desire to experiment on living unborn children for research or therapies that are in any way related to stem cells, then sec. 188.037 can probably no longer protect the unborn children.

3. No abortions to obtain fetal tissue. Missouri law provides that no abortion may be performed if the abortionist knows that the child was conceived for the purpose of providing organs or tissue for transplantation and that the abortion is intended to utilize the organs or tissue. Section 188.036.1, RSMo. Both the conception and the abortion have to have had the same purpose—providing organs or tissue for someone else. An abortion performed to obtain fetal tissue when the child was not conceived for that purpose is allowed under the statute.

   This provision is also ineffective when it comes to performing abortions to obtain fetal tissue for stem cell research or stem cell therapies. Art. III, Sec. 38(d).

4. Using fetal tissue for transplantation. Under Missouri law, no one may utilize an aborted infant's organs or tissue for transplantation if the person knows that the abortion was procured for that purpose. Section 188.036.2, RSMo. After the

adoption of sec. 38(d) of Article III of the state constitution, this provision is not enforceable when it comes to using fetal tissue from aborted children for stem cell research or stem cell therapies.

5. No inducements to abort for fetal tissue. No one shall offer any inducement to a woman or prospective father of an unborn child to conceive the child for use of its organs or tissue or to have an abortion for this purpose. Section 188.036.3 & .4. Here, unlike the statute discussed in point 3 above, the prohibitions are "either/or"—if one offers such compensation either for the conception of the child, or else for the abortion of the child, one violates the statute. Moreover, no one may purchase or sell fetal tissue or organs resulting from an abortion. Section 188.036.5, RSMo. A recipient of fetal tissue may pay for the expenses of burial or other final disposition of the fetal remains and for a pathological examination, autopsy or postmortem examination of the fetal remains. Id.

   Again, one must note that Art. III, sec. 38(d) of the Missouri Constitution renders these prohibitions useless when it comes to procuring fetal tissue for stem cell research or stem cell therapies.

H. Insurance And Medical Plan Coverage

1. Missouri law provides that all insurance policies, plans, and contracts require a separate rider and premium in order to cover abortions. Section 376.805, RSMo.

2. Missouri has exercised the "opt out" allowed by the federal Affordable Care Act, 42 U.S.C. sec. 18023(a) and now forbids any insurance policies issued from the new ACA Exchanges from offering coverage of abortion at all. Section 376.805.3.

J. Status Of Unborn Outside Abortion Context

1. Unborn are persons with protectable interests. Missouri law states that to the extent the U. S. Constitution and interpretation thereof by the courts allow, an unborn child is a person from the moment of conception with protectable interests in life, health and well-being. Furthermore, Missouri law declares that parents have protectable interests in the lives, health and well-being of their unborn children. Section 1.205, RSMo.

2. The U. S. Supreme Court allowed this statute to go into effect. Because there was no showing that the language of Missouri's statute impinged upon the right to abortion, the Supreme Court determined there was no need to consider its constitutionality. *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989). It is presumed to be constitutional.

3. Deaths of unborn children may impose civil & criminal liability. On the strength of the statute, the Missouri state courts have declared that the killing of an unborn child, outside of the abortion context, can constitute criminal homicide. *State v. Knapp*, 843 S.W.2d 345 (Mo. banc 1992); *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. 1997). In addition, the death of an unborn child, non-viable or viable, may give rise to a cause of action for wrongful death which may be pursued by the parents. *Connor v. Monkem Co., Inc.*, 898 S.W.2d 89 (Mo. banc 1995).

4. IVF babies and Amendment 2. The logic of the court decisions mentioned above would embrace a conclusion that discarding unwanted or extra IVF embryos would constitute a crime in Missouri and would leave the responsible persons liable for civil suits for wrongful death. But courts sometimes have agendas that overcome logic. That was apparent in a case that severely weakened the effectiveness of sec. 1.205, *McQueen v. Gadberry,* 507 S.W.3d 127 (Mo. App. 2016). In that case, two divorcing parents differed on what to do with their frozen embryos. The Missouri Court of Appeals that sec. 1.205 did not protect them, reasoning that they were not "persons" but "special property," and that every person has a right not to become a parent. (The Court ignored the obvious fact that it was too late to refuse parenthood when biological offspring had already been created.) Neither parent had greater rights in the "special property" than the other, but the Court did allow one of them to keep the frozen embryos in stasis if she would pay the storage costs. The Court did not attempt to order any final disposition of the poor infants.

   It is also true that Article III, sec. 38(d) of the Missouri Constitution affects IVF babies. The protection of sec. 1.205 is lost when it comes to killing IVF babies for stem cell research and stem cell therapies.

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