

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

AMERICAN CIVIL LIBERTIES UNION OF
MISSOURI and SARA E. BAKER,

Plaintiffs,

v.

JOHN R. ASHCROFT, in his official capacity
as Missouri Secretary of State, 600 West Main
Street, Jefferson City, MO 65101,

ERIC S. SCHMITT, in his official capacity as
Attorney General for the State of Missouri,
207 West High Street, Jefferson City, MO
65102,

and

NICOLE GALLOWAY, in her official
capacity as Auditor for the State of Missouri,
301 West High Street, Rm. 880, Jefferson
City, MO 65102,

Defendants.

Case No. _____

Division: _____

**VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, INJUNCTION,
AND DECLARATORY RELIEF**

Plaintiffs, American Civil Liberties Union of Missouri and Sara E. Baker, bring this
action for temporary restraining order, injunction, and declaratory relief:

INTRODUCTION

1. On the last day of the 2019 legislative session, House Bill No. 126 passed, repealing
Mo. Rev. Stat. §§ 135.630, 188.010, 188.015, 188.027, 188.028, 188.043, and 188.052, and
replacing these repealed sections with seventeen new sections relating to abortion and banning
abortions at eight weeks of pregnancy.

2. Governor Michael L. Parson signed HB126 into law on May 24, 2019.

3. On May 28, 2019, Sara E. Baker, on behalf of the American Civil Liberties Union of Missouri, as required under Mo. Rev. Stat. § 116.332, submitted a proposed Referendum Petition to the Missouri Secretary of State seeking to place HB126 on the ballot for general election.

4. On June 6, 2019, Secretary of State Ashcroft rejected the proposed Referendum Petition seeking to place HB126 on the ballot for general election.

JURISDICTION AND VENUE

5. This Court maintains original subject-matter jurisdiction over this action under Sections 526.030 and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

6. Venue is proper in this Court because Secretary of State John R. Ashcroft, Attorney General Eric S. Schmitt, and Missouri State Auditor Nicole Galloway maintain offices in Cole County, Missouri.

PARTIES

A. Plaintiffs

7. Plaintiff American Civil Liberties Union of Missouri (ACLU), is a nonprofit organization created and operating under the laws of the State of Missouri. Amongst its activities is advocacy to protect and further civil liberties within Missouri.

8. Plaintiff Sara E. Baker is a resident of the State of Missouri.

B. Defendants

9. Defendant John R. Ashcroft is sued in his official capacity as the Missouri Secretary of State. As Secretary of State, Ashcroft is responsible for either approving or rejecting a proposed Referendum Petition and preparing ballot summary language.

10. Defendant Eric S. Schmitt is sued in his official capacity as the Attorney General of the State of Missouri. As Attorney General, Schmitt is the State's chief law enforcement officer and is authorized by statute to appear and answer or defend in any proceeding in which Missouri's interests are involved. Mo. Rev. Stat. § 27.060. In addition, Schmitt's office is responsible for reviewing the submitted Referendum Petition form and forwarding its comments to Ashcroft's office within 10 days after receiving the proposed petition.

11. Defendant Nicole Galloway is sued in her official capacity as the Auditor for the State of Missouri. As Auditor, Galloway is responsible for preparing a fiscal note and fiscal note summary related to the proposed Referendum Petition. Galloway's office must forward the fiscal note and fiscal note summary to Schmitt's office within 20 days after receiving the proposed petition.

FACTUAL ALLEGATIONS

12. On May 17, 2019, the Missouri General Assembly passed HB126, repealing Mo. Rev. Stat. §§ 135.630, 188.010, 188.015, 188.027, 188.028, 188.043, and 188.052, and replacing these repealed sections with seventeen new sections, and thereby banning abortions in Missouri at eight weeks of pregnancy.

13. On May 24, 2019, HB126 was signed into law by Governor Parson.

14. Although all of the new provisions relate in some way to the regulation of abortion, they cover issues as disparate as a ban on certain abortions, requirements concerning multiple kinds of insurance, tax credits for certain charitable donations, and the information to be made available to pregnant people who go to a family planning agency or abortion provider.

15. Some of the new provisions vary only slightly from the laws currently in place, while others are significantly different or altogether new.

16. The Missouri Constitution reserves to the people the right of referendum and thereby confers upon citizens the right to approve or reject any law passed by the General Assembly except for emergency measures (i.e., “necessary for the immediate preservation of the public peace, health or safety”) and certain appropriation bills. Mo. Const. art. III, §§ 49, 52(a).

17. The right of referendum is fundamental to a functioning democracy.

18. Mo. Const. art. III, § 49 provides: “The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.”

19. On May 28, 2019, Plaintiffs submitted a proposed Referendum Petition seeking to place HB126 on the ballot for a statewide vote.

20. Mo. Const. art. III, § 52(a) provides:

A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

21. Unless a bill contains an emergency clause or is an appropriation act, it takes effect 90 days after the session adjourns. Mo. Const. art. III, § 29. If the emergency clause is invoked, the bill goes into effect upon its passage and approval.

22. In the context of a referendum, an emergency clause applies only to “laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools.” Mo. Const. art. III, § 52(a).

23. HB126 contains an emergency clause related only to the single provision that requires notification in some circumstances of parents and/or guardians when a person under the age of 18 seeks to have an abortion (the repeal and reenactment of Mo. Rev. Stat. § 188.028).

24. In relevant part, HB126, Section C, states: “Because of the need to protect the health and safety of women and their children, both unborn and born, the repeal and reenactment of section 188.028 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 188.028 of this act shall be in full force and effect upon its passage and approval.” This provision subject to the emergency clause went into effect on May 24, 2019.

25. No other provision of HB126 is alleged to be subject to this purported emergency.

26. Without a referendum, the remaining provisions in HB126 will go into effect on August 28, 2019.

27. To call a referendum by citizen petition, petitions must be signed by “five percent of the legal voters in each of two-thirds of the congressional districts in the state.” Mo. Const. art. III § 52(a).

28. Referendum petitions (with a sufficient number of valid signatures) must be filed with the Secretary of State no later than 90 days after adjournment of the session in which the bill to be referred was passed by the General Assembly.

29. Referendum petitions on bills passed this session, including HB126, must be filed with the Secretary of State by August 28, 2019.

30. Plaintiffs intend to call a referendum by citizen petition on HB126 and have demonstrated that intent by filing a valid referendum petition form with the Secretary of State, as required under state law.

31. Before Plaintiffs may begin obtaining petition signatures, a series of government actions must occur: the Secretary of State must approve the form of the referendum petition (up to 15 days); the Auditor must prepare a fiscal note (up to 20 days); the Secretary of State must issue a summary statement (up to 23 days); the Attorney General must approve the fiscal note and summary statement (up to 10 days); and the Secretary of State must certify the official ballot title of the referendum measure (up to 3 days).

32. Signatures obtained before the Secretary of State's certification of the official ballot title "shall not be counted." Mo. Rev. Stat. § 166.334.2. Thus, by invalidly rejecting Plaintiffs Referendum Petition, Secretary Ashcroft has cut off the referendum process and blocked Plaintiffs from collecting signatures in a manner that ensures they will be counted.

33. Mo. Rev. Stat. § 188.028 governs under what circumstances an abortion may be performed on a person under the age of 18.

34. For pregnant persons under the age of 18 who have not obtained judicial authorization to self-consent or judicial consent to an abortion, the prior version of section 188.028 required consent thereto from one parent or guardian before such a person could seek an abortion.

35. The new version of section 188.028, as enacted by House Bill 126, also requires that “the consenting parent or guardian of the minor has notified any other custodial parent in writing prior to the securing of the informed written consent of the minor and one parent or guardian.”

36. The new version of section 188.028 then sets out exceptions to when a consenting parent need not notify any other custodial parent, including if that parent was convicted of certain offenses, was the subject of certain orders of protection, had his or her parental rights terminated, or suffers from some kind of incapacity.

37. Other than the requirement of a particular type of notification of all custodial parents for a minor who seeks an abortion but who has not obtained either judicial authorization to self-consent or judicial consent to an abortion, the amendments to section 188.028 are almost entirely limited to the addition of language clarifying that the “induction” of an abortion is subject to the same limitations as the “performance” of an abortion.

38. While there are some changes to section 188.028, the majority of this section remains identical to the previous version already in existence when HB126 was passed.

39. There is no real or existing danger addressed by any provision in HB126, including the repeal and replacement of section 188.028 that makes the use of the emergency clause appropriate.

40. There is no discussion of any present danger to the public on the face of HB126 that makes the new version of section 188.028 necessary for the immediate preservation of the public peace, health, or safety.

41. The Referendum Petition submitted by Plaintiffs is valid.

42. On June 6, 2019, Secretary Ashcroft rejected the valid petition form Plaintiffs submitted to begin the referendum process for HB126, based upon his position that, by including an

emergency clause as to a single provision of HB126 (§ 188.028), the legislature stripped Missourians of their fundamental right of referendum as to the entirety of HB126.

43. Secretary Ashcroft specified that he “did not reject these referendum petitions as to form.”

44. Whether an act passed by the legislature is in fact an emergency measure is a judicial determination.

45. No court has determined that any part of HB126 is necessary for the immediate preservation of the public peace, health, or safety.

46. No part of HB126 can be properly declared an emergency measure.

47. The Missouri legislature has invoked and included the emergency clause for the sole reason of preempting a referendum of HB126, not because of an actual immediate need to preserve the public peace, health, or safety. *See* J. Rosenbaum, St. Louis Pub. Radio, June 3, 2019, *Missouri Abortion Ban Opponents Could Face Referendum Snag*, <https://news.stlpublicradio.org/post/missouri-abortion-ban-opponents-could-face-referendum-snag#stream/0> (attributing to Sen. Andrew Koenig, Senate handler of HB126, the statement that: “What we did in the bill is actually preempt that type of situation by putting an emergency clause in there. So there can’t be a referendum.”).

48. Defendants have violated Plaintiffs’ fundamental constitutional right to call a referendum by citizen petition as to HB126.

49. Plaintiffs have no alternative remedy to vindicate their fundamental constitutional right to call a referendum by citizen petition as to HB126.

COUNT I

Mo. Const. art. III, § 52(a)

50. Plaintiffs incorporate by reference all of the preceding paragraphs of this Petition as though fully set forth herein.

51. Only one provision of HB126 (§ 188.028) is alleged to be subject to a purported emergency.

52. The people of the State of Missouri cannot be deprived of their fundamental right to referendum HB126 on the basis that one single provision of HB126 is alleged to be subject to a purported emergency.

WHEREFORE Plaintiffs pray this Court:

- A. Enter judgment that rejecting the proposed Referendum Petition violates Mo. Const. art. III, § 52(a), because only one provision of the law is allegedly subject to a purported emergency and the entire law cannot be precluded from referendum on this basis;
- B. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants and anyone acting in concert with them from rejecting Plaintiffs' Referendum Petition on the basis that one provision of HB126 is subject to an emergency clause and requiring that Defendant Ashcroft approve the Referendum Petition form, prepare a summary statement, and certify the official ballot title; Defendant Galloway prepare a fiscal note and fiscal note summary; and Defendant Schmitt approve the summary statement and fiscal note, all within the time limits set forth by Missouri law.
- C. Allowing such other and further relief as is proper under the circumstances.

COUNT II

Mo. Const. art. III, § 52(a)

53. Plaintiffs incorporate by reference all of the preceding paragraphs of this Petition as though fully set forth herein.

54. The determination as to whether any provision of a statute has been properly deemed an emergency and therefore subject to immediate enactment upon passage and approval is a judicial function, not a legislative function.

55. HB126 does not contain any provision, including § 188.028, that constitutes an emergency subjecting it to immediate passage and precluding it from a referendum.

WHEREFORE Plaintiffs pray this Court:

- A. Enter declaratory judgment that HB126, including § 188.028, is not subject to the emergency clause provision in Mo. Const. art. III, § 52(a);
- B. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants and anyone acting in concert with them from rejecting Plaintiffs' Referendum Petition on the basis that one provision of HB126 is subject to an emergency clause and requiring that Defendant Ashcroft approve the Referendum Petition form, prepare a summary statement, and certify the official ballot title; Defendant Galloway prepare a fiscal note and fiscal note summary; and Defendant Schmitt approve the summary statement and fiscal note, all within the time limits set forth by Missouri law.
- C. Allowing such other and further relief as is proper under the circumstances.

COUNT III

Mo. Rev. Stat. §§ 116.150 and 116.332

56. Plaintiffs incorporate by reference all of the preceding paragraphs of this Petition as though fully set forth herein.

57. Pursuant to Mo. Rev. Stat. § 116.332.3, Secretary Ashcroft's responsibility in reviewing the submission of a referendum petition is to "review the comments and statements of the attorney general as to form and make a final decision as to the approval or rejection of the form of the petition." (Emphasis added).

58. Secretary Ashcroft specified that he "did not reject these referendum petitions as to form."

59. Any other review by Secretary Ashcroft or any other defendant, other than as to form, does not occur until after the signatures are obtained and submitted. *See* § 116.150.

60. Plaintiffs' Referendum Petition was valid as to form.

WHEREFORE Plaintiffs pray this Court:

D. Enter declaratory judgment that HB126, including § 188.028, is not subject to the emergency clause provision in Mo. Const. art. III, § 52(a);

E. Enter declaratory judgment that the Referendum Petition submitted by Plaintiffs was valid as to form;

F. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants and anyone acting in concert with them from rejecting Plaintiffs' Referendum Petition on the basis that one provision of HB126 is subject to an emergency clause and requiring that Defendant Ashcroft approve the Referendum Petition form, prepare a summary statement, and certify the official ballot title; Defendant Galloway prepare a fiscal note and fiscal note summary; and Defendant Schmitt approve the summary statement and fiscal note, all within the time limits set forth by Missouri law.

G. Allowing such other and further relief as is proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
ANTHONY E. ROTHERT, #44827
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VERIFICATION

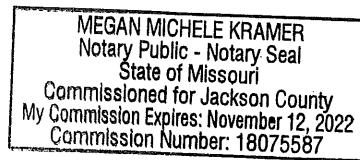
I, Sara E. Baker, after first being duly sworn upon my oath, state that I have read the foregoing Petition and that I am familiar with the information it contains therein, and that the matters set forth therein are true and correct to the best of my knowledge, information, and belief.

Sara E. Baker

Sara E. Baker
ACLU of Missouri

Subscribed and sworn to before me, a Notary Public in and for the State of Missouri, this 6th day of June, 2019.

Megan Michele Kramer
Notary Public



My commission expires: November 12, 2022