

REVERSE HOBBY LOBBY: THE SATANIC TEMPLE'S FIGHT
AGAINST INDOCTRINATION ABORTION LAWS

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I. INTRODUCTION

Missouri's Informed Consent Law (Informed Consent Law) requires women seeking an abortion to comply with various regulations.¹ Some of those regulations further the tenet (Missouri Tenet) that life begins at conception, despite the lack of scientific evidence.² The Missouri Tenet alleges each fetus is an individual and unique life beginning at conception and abortion terminates that life.³

However, Mary Doe (Doe), a pregnant woman in Missouri, sought to obtain an abortion.⁴ She subscribes to the faith of the Satanic Temple which believes that the life of a human does not begin until a fetus becomes viable.⁵ She explained these beliefs in a written note to her abortion provider and acknowledged her desire to obtain an abortion was fully informed and voluntary.⁶ Yet, she was still denied from exemption from the abortion regulations preconditions.⁷

She brought suit and alleged the Informed Consent Law violated her freedom of religion and the Establishment Clause of both Missouri's and the United State's constitutions.⁸ Doe relied on the landmark case, Burwell v. Hobby Lobby to set a precedent for her own case.⁹

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¹ MO. REV. STAT. § 188.027.1(2) (2018).

² *Id.*

³ *Id.*

⁴ Debra Cassens Weiss, *Satanic Temple's Challenge to Abortion Law Heads to Missouri Supreme Court*, ABA JOURNAL, Jan. 23, 2018, http://www.abajournal.com/news/article/satanic_temples_challenge_to_abortion_law_heads_to_missouri_supreme_court.

⁵ See *infra* section 11.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

In late January of 2018 the Missouri Supreme Court heard oral arguments for Doe's case.¹⁰ When the Court was hearing the argument they looked at the following questions:

One is whether Doe sufficiently stated a claim under the state's religious freedom restoration act. Related issues include whether the informed consent law substantially restricts Does' free exercise of religion, serves the government's compelling interest in obtaining her informed consent to an abortion, and is the least restrictive means of obtaining such consent. Another question is whether the informed consent law violates the establishment clause. Related issues include whether Missouri's political branches of government are permitted to express a position about when life begins, whether the informed consent law constitutes a religious tenet promoting a religious belief, and whether the informed consent law discriminates against religion or among religions.¹¹

The Court will hand down its decision about the issue later this year.¹² This article will explore the implications of Hobby Lobby as applied to an individual seeking an abortion, whose religious liberties were infringed in the process.¹³ It will then conclude with the prediction that the Missouri Supreme Court will rule in favor of Doe for the reasons discussed in the article below.¹⁴

¹⁰Debra Cassens Weiss, *Satanic Temple's Challenge to Abortion Law Heads to Missouri Supreme Court*, ABA JOURNAL, Jan. 23, 2018, http://www.abajournal.com/news/article/satanic_temples_challenge_to_abortion_law_heads_to_missouri_supreme_court.

¹¹*Docket Summaries Supreme Court of Missouri*, MISSOURI COURTS JUDICIAL BRANCH OF GOVERNMENT, (Jan. 23, 2018, 9:30 AM), <https://www.courts.mo.gov/page.jsp?id=119842>.

¹² *Id.*

¹³ See *infra* Section III.

¹⁴ *Id.*

II. BACKGROUND

A. *FACTS OF THE CASE*

Doe was a pregnant woman in Missouri who sought an abortion in May 2015¹⁵ and was required to comply with certain preconditions under Missouri's Informed Consent Law to receive the abortion.¹⁶ The state law required that she certify she received a printed booklet containing information about abortions and the following quote: "[t]he life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being."¹⁷ She was also required to view an active ultrasound of the fetus and hear the fetal heartbeat.¹⁸ Following those procedures, she was required to wait seventy-two hours before the abortion could be performed.¹⁹

Furthermore, she was required to pay for the mandatory ultrasound, heart beat reader, and lodging for the seventy-two hour wait period.²⁰ It took her approximately forty-five hours of work to save up for those expenses.²¹

Prior to the procedure, Doe traveled to St. Louis and presented the abortion provider with a letter requesting an immediate abortion because (1) she had already reviewed the written information booklet; (2) she did not believe as a matter of religious faith that human life begins at conception; (3) at her stage of pregnancy, the fetus was not capable of survival outside of her body; (4) she did not believe that an abortion terminates "the life of a separate, unique, living human being"; and (5) she absolved the provider of any responsibility for providing her with the booklet and forcing her to wait seventy-two hours before performing the abortion.²²

The abortion provider, however, declined the request and complied with the state law.²³ Doe received the abortion after the

¹⁵ *Doe v. Greitens*, 530 S.W.3d 571, 574 (Mo. Ct. App. 2017).

¹⁶ *Id.* at 573.

¹⁷ *Id.*; *See also* MO. REV. STAT. § 188.027.1(2) (2018).

¹⁸ *Doe*, 530 S.W.3d at 575.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

receipt of the information booklet, the ultrasound and fetal heartbeat, and the seventy-two hour waiting period.²⁴

Doe then filed suit in both the federal and state courts alleging Religion Clause-based claims regarding three main issues with Missouri's Informed Consent Law.²⁵ First she alleged that the state established a religion because the statutorily required preconditions promote a religion-based tenet; namely that "[t]he life of each human being begins at conception. And that abortion will terminate the life of a separate, unique, living human being."²⁶ Moreover, by furthering this tenet, Doe asserted that the state casts guilt and shame on pregnant women who do not agree with it discourage the pregnant woman from getting an abortion.²⁷

Second, she alleged the state restricted her free exercise of religion because the preconditions burdened her free exercise for various reasons including "having to pay for 'the delivery [to] herself the religious belief of the State of Missouri that the Missouri Tenet is true."²⁸

Finally, she alleged there is no compelling state interest in applying these restrictions to her. The compelling state interest of the Informed Consent Law is to ensure a woman's decision to have an abortion is voluntary and fully informed; but Doe had already made a voluntary and fully informed decision before she entered the abortion provider's facility.²⁹

Missouri's state constitution contains a religious freedom clause which discusses liberty of conscience and belief.³⁰ It provides that all people have

a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience . . . that to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish

²⁴ *Id.*

²⁵ *Id.* at 574–76.

²⁶ *Id.* at 574–75.

²⁷ *Id.* at 575.

²⁸ *Id.*

²⁹ *Id.* at 576.

³⁰ MO. CONST. art. 1, § 5.

any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed . . . that the state shall not coerce any person to participate in any prayer or other religious activity . . . but this section shall not be construed to . . . nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.³¹

Similar to the Missouri Constitution, the United States Constitution provides that Congress shall not make any law “respecting an establishment of religion, or prohibiting the free exercise thereof.”³²

A. *PROCEDURAL HISTORY OF THE CASE*

Doe filed suits in both the federal and state courts against the state of Missouri and claimed its Informed Consent Law was unconstitutional.³³ In the state court, the Cole County Circuit Court dismissed Doe’s claim with prejudice.³⁴ She appealed that judgement to Missouri’s Court of Appeals who determined her case raised “real and substantial constitutional claims,” and was therefore “within the Missouri Supreme Court’s exclusive jurisdiction,” and order it transferred.³⁵

B. *RELEVANT LEGAL DOCTRINES*

1. *Missouri’s Informed Consent Law and Related Statutes*

Missouri’s Informed Consent Law, § 188.027, is a provision under the Missouri’s Regulation of Abortions which governs the required preconditions to procure an abortion within the state.³⁶ It requires that ‘no abortion shall be performed or induced on a woman

³¹ *Id.*

³² U.S. CONST. amend. I.

³³ Jex Blackmore, *Missouri Court to Hear Landmark Case on Satanic Temple Abortion*, THE SATANIC TEMPLE, <https://thesatanictemple.com/blogs/the-satanic-temple-news/missouri-religious-reproductive-rights-1>.

³⁴ *Doe v. Greitens*, 530 S.W.3d 571, 573 (Mo. Ct. App. 2017).

³⁵ *Id.* at 574.

³⁶ MO. REV. STAT. § 188.027 (2018).

without her voluntary and informed consent, given freely and without coercion.”³⁷

The requirement does not stop there however, because the provider can still only give the abortion if a qualified professional has presented the woman with printed materials from the department which contain descriptions of the fetus at two-week gestational increments from conception to full term, including color photographs.³⁸ The printed materials also prominently display the following statements, “[t]he life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being.”³⁹ All of these material must be presented within a mandatory seventy-two hour waiting period.⁴⁰ The qualified professional must also provide the woman with the opportunity to view at least seventy-two hours prior to the abortion an active ultrasound of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible.⁴¹

The statue further requires the woman to certify in writing on a checklist form all the required information was presented to her, she was provided an ultrasound image of the unborn, and was able to hear the heartbeat of the unborn child.⁴² She must sign a certification which further certifies that she “gives her voluntary and informed consent, freely and without coercion, to the abortion procedure.”⁴³

2. *Missouri’s Religious Freedom Restoration Act*

In addition to Missouri’s Constitution, the Missouri’s Religious Freedom Restoration Act (Missouri RFRA) protects an individual’s religious freedoms.⁴⁴ Missouri implemented Missouri RFRA in 2016.⁴⁵ It provides that a governmental authority may not restrict free exercise of religion except if (1) the restriction is in the form of a rule of general applicability, and does not discriminate against religion and (2) the governmental authority demonstrates that the restriction is essential to furthering a compelling governmental interest, and it not unduly restrictive.⁴⁶

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

The latter element must take into account relevant circumstances.

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3. *Burwell v. Hobby Lobby Stores and Federal Religious Freedom Restoration Act*

Burwell v. Hobby Lobby Stores, Inc. is a 2014 United States Supreme Court case that has set the contemporary stage for the federal Religious Freedom Restoration Act (Federal RFRA).⁴⁸ The case considered whether the U.S. Department of Health and Human Services could require corporations to provide health insurance coverage for contraception to their employees if the individual corporation, Hobby Lobby, sincerely held the religious belief that life begins at conception, and that providing coverage for contraception would violate such religious beliefs.⁴⁹ Hobby Lobby argued that providing their employees with health insurance coverage, which included contraceptives, substantially burdened their free exercise.⁵⁰

The Supreme Court held that the requirement violated the federal Religious Freedom Restoration Act because compliance with the requirement was contrary to Hobby Lobby's religious objections and substantially burdened their exercise of religion.⁵¹ The Court went on to say it also violated Federal RFRA because even assuming the requirement served a compelling government interest (a requirement under Federal RFRA), it was not the least restrictive means of serving that interest because there are other ways of ensuring women have access to certain free contraceptives.⁵²

III. ANALYSIS

1. *Establishment Clause Violation*

Following the expansion of religious liberty in Hobby Lobby, the Missouri Supreme Court now faces a difficult decision in balancing Missouri's Informed Consent Law against its constitutional and statutorily required right to freedom of religion for its citizens.⁵³

The Missouri and the United States Constitution both ensure the Government does not establish a religion.⁵⁴ However, the

⁴⁷ *Id.*

⁴⁸ *See generally, Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*; *See supra* Section II.

⁵⁴ *Id.*

requirements of the Informed Consent Law do just that; with specific regard to the distribution of the booklet containing the Missouri Tennent.⁵⁵ The tenet that conception is the start of a human life is based in a religious ideology.⁵⁶

It is known in today's social and political environment that many religions oppose abortion, but specifically Christianity.⁵⁷ By subjecting women to literature informing them that human life begins at conception, the Government is establishing their religious tenet, that abortion is the termination of a separate unique individual life, a life which begins at conception.⁵⁸

This ideology is religious in nature and violates both the federal and Missouri Establishment Clauses contained within their respective constitutions.⁵⁹ The debate surrounding when human life begins is one of the most contentious religious and political debates of modern American culture.⁶⁰ The Missouri Tennent contributes the Governments' opinion of when human life begins and implies that abortion is murder.⁶¹ Missouri is forcing this ideology on women seeking an abortion despite the fact that "[s]tate laws that are drafted with the explicit intention of promoting one religious denomination violate the Establishment Clause because it 'engender[s] a risk of politicizing religion [causing] political fragmentation on sectarian lines.'"⁶²

Here, it is no coincidence the Informed Consent Law happens to promote the tenet's of some religions, namely Christianity.⁶³ The law clearly takes a side in a contentious debate that is consistently discussed both at the state and federal levels throughout the branches of government.

The Eighth Circuit has held in Webster v. Reproductive Health Services that the Missouri tenant is "an impermissible state adoption of a theory when life begins."⁶⁴ Because the Missouri

⁵⁵ MO. REV. STAT. § 188.027 (2018).

⁵⁶ Brief for Mary Doe Brief at 41, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁵⁷ *Id.* at 41–42.

⁵⁸ See MO. REV. STAT. § 188.027 (2018); See also Brief for Mary Doe Brief at 41, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁵⁹ MO. CONST. art. 1, § 5; U.S. CONST. amend. I.

⁶⁰ Brief for Mary Doe Brief at 41, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁶¹ *Id.*

⁶² Brief for Mary Doe Brief at 42, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>

⁶³ *Id.*; See also McGowan v. Maryland, 366 U.S. 420, 442 (1961).

⁶⁴ Reproductive Health Serv. v. Webster, 851 F.2d 1071, 1076 (8th Cir. 1988), rev'd other grounds, 492 U.S. 490 (1989).

tenant adopts the belief—that some Christians believe—of human life beginning at conception, it is establishing a religion, and therefore, violates the Establishment Clause of both the Missouri state constitution as well as the federal constitution.⁶⁵ Moreover, the Eight Circuit has gone onto say “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.”⁶⁶ However, the Missouri government here is clearly steering women seeking abortion in the direction to believe, as well as feel guilty if they do not believe, that life begins at conception an abortion is murder.⁶⁷

While the United States Supreme Court has said in the past that the Missouri tenet could be read to “express a value judgment [of] ‘favoring childbirth over abortion,’”⁶⁸ in this case Doe’s personal judgment (of favoring an abortion over childbirth in her individual circumstance) was already decided prior to entering the abortion clinic and was expressed through the letter she wrote relieving the abortion provider of his duties under that portion of the statute.⁶⁹

Furthermore, the Government’s intent and interest is expressly stated in the Informed Consent Law.⁷⁰ The state wanted to ensure the choice to consent to having an abortion was fully voluntary and informed and given freely without coercion.⁷¹ The statute makes no imposition to imply that the compelling interest was to express a value judgment favor and childbirth over abortion.⁷² If the purpose of the requirements of the statute was to ensure that a woman was fully informed and was voluntarily having an abortion freely without coercion, the states imposition favoring childbirth over abortion serves no purpose and violates the Establishment Clause.⁷³ It is clear the State’s intent was to further a religious tenet and not express a value judgment as they expressly stated their interest within the statute.⁷⁴

⁶⁵ Brief for Mary Doe Brief at 41, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁶⁶ ACLU Neb. Found. V. City of Plattsmouth, 358 F.3d 1020, 1042 (8th Cir. 2004), rev’d en banc on other grounds, 419 F.3d 772 (8th Cir. 2005).

⁶⁷ MO. REV. STAT. § 188.027 (2018).

⁶⁸ Webster v. Reproductive Health Servs., 492 U.S. 490,491 (1989).

⁶⁹ See *supra* Section II.

⁷⁰ MO. REV. STAT. § 188.027.11.

⁷¹ *Id.*

⁷² *Id.*; See also Brief for Mary Doe Brief at 43 n. 5, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁷³ Brief for Mary Doe Brief at 43 n. 5, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁷⁴ *Id.*

In the Webster case, the United States Supreme Court majority expressly avoided addressing whether this Missouri Tenet violated the Establishment Clause.⁷⁵ Nevertheless, it is clear the Missouri Tenet does not seek to express value judgment, but rather weigh in on the contentious debate regarding when life begins.⁷⁶ The Missouri Tenet serves no identifiable secular purpose.

Justice Stevens addressed this exact sentiment when he concurred in part and dissented in part to the Webster decision.⁷⁷ He rightfully found that the Missouri Tenet violated the Establishment Clause because it “unequivocal[ly] endorse[d] . . . a religious tenet of some . . . Christian faiths.”⁷⁸ The beliefs of the Missouri Tenet do not merely coincide with the tenants of certain religions, but rather may have been motivated by religious considerations.⁷⁹ “That fact alone compels the conclusion that the statute violates the Establishment Clause.”⁸⁰

Moreover, the Informed Consent Law violates a clearly established jurisprudence of the Establishment Clause which is that the government cannot sponsor the indoctrination of the beliefs of a particular religion.⁸¹ “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”⁸² The purpose of the Informed Consent Law is to promote the religious-motivated Missouri Tenet which Doe, and multiple other Missouri citizens, do not believe in; that a fetus is a separate and unique human being whose life begins at conception.⁸³ But this tenet serves no secular purpose, and therefore is a discrimination against those citizens who carry different beliefs, thus it violates the Establishment Clauses.⁸⁴

The law had both the purpose and the effect of discriminating against certain religious viewpoints.⁸⁵ It is Doe’s right to exercise

⁷⁵ *Id.* at n. 6; *See generally* Webster v. Reproductive Health Servs., 492 U.S. 490 (1989).

⁷⁶ Brief for Mary Doe Brief at 41, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁷⁷ Webster, 492 U.S. at 566–67.

⁷⁸ *Id.* at 567.

⁷⁹ *Id.* at 566–67.

⁸⁰ *Id.*

⁸¹ Brief for Mary Doe Brief at 46, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839> (citing School Dist. V. Ball, 473 U.S. 373, 385 (1985)).

⁸² Larson v. Valente, 456 U.S. 228, 244 (1982).

⁸³ Brief for Mary Doe Brief at 47, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁸⁴ *Id.*

⁸⁵ *Id.*

her religious belief that she can abort—in good conscious—a non-viable fetus, without consideration of its current or future condition as a separate or unique individual life.⁸⁶

For the Informed Consent Law to truly be non-discriminatory, the booklet and regulations of the statute would have to describe the various viewpoints of when a human being comes into existence; including Doe's belief that it is not a human being until the fetus become viable.⁸⁷

While Doe was not forced to read the booklet, she was only forced to acknowledge receipt of it,⁸⁸ the impact of the Informed Consent Law on women seeking abortions in Missouri is irrelevant under an Establishment Clause claim.⁸⁹ The Establishment Clause does not depend on any showing of direct governmental compulsion.⁹⁰ The clause is violated when laws are enacted which establish an official religion regardless of the coercive effect on individuals.⁹¹ Therefore, the effect on Doe is irrelevant for her to succeed on this claim.

2. *Free Exercise Violation*

Both the Federal and Missouri RFRA statutes establish that the standard of review for laws that infringe on the free exercise of religion is strict scrutiny. To succeed on an RFRA claim the plaintiff bears the burden of showing that (1) the plaintiff sincerely held her religious belief and (2) the statute places a substantial burden on the free exercise of that religious belief.⁹²

To begin, the plaintiff must hold a sincere religious belief. However, the court has said in the past,

[s]incere religious belief cannot be subjected to a judicial sorting of the heretical from the mainstream—certainty not in discharge of duty to faithfully apply protections demanded by the law. Efforts to that end would put at risk for protection that the First Amendment and the [RFRA] are meant to provide.⁹³

⁸⁶ *Id.*

⁸⁷ *Id.* at 48.

⁸⁸ MO. REV. STAT. § 188.027.11.

⁸⁹ Brief for Mary Doe Brief at 48-49, *Doe v. Nixon*, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁹⁰ *Id.* at 49

⁹¹ *Id.*

⁹² *Id.* at 21; *See also* *A.A. v. Needville*, 611 F.3d 248, 260 (5th Cir. 2010).

⁹³ *Needville*, 611 F.3d at 261.

The court has, in the past, deferred to plaintiff's claim that the actions taken by the plaintiff, giving rise to the claim, were motivated by religious beliefs and not just cultural or philosophical ones.⁹⁴ For example, in Needville, the court ruled a Native American student who sought to wear his hair long, uncut and unbraided in school as a part of his "familial religious tradition" met his burden of proving it was a sincere religious belief.⁹⁵

Doe's actions to obtain an abortion were motivated by her religious beliefs and the court should defer to those actions when determining that her religious beliefs are sincere.⁹⁶ Not only did Doe seek to voluntarily obtain an abortion prior to the viability of a fetus, she did so after reviewing the contents of Missouri's Informed Consent Law.⁹⁷ Her actions demonstrate that her beliefs were sincere because she took the time to acknowledge Missouri's Tenet and describe her own religious beliefs in a note she presented to her abortion provider prior to obtaining an abortion.⁹⁸ The Court's job is not to determine if her beliefs are true, just that they are sincerely held.⁹⁹ Given the facts of this case, Doe consciously held the religious belief that a fetus was not a human until it was a viable fetus as described in her note to the abortion provider.¹⁰⁰

Additionally, the second step is that the plaintiff must prove that the law substantially burdens the plaintiff's free exercise of religion.¹⁰¹ The court has said

a burden is substantial if it is real versus merely perceived, and significant versus trivial—two limitations that leave a broad range of things covered. The focus of inquiry is not on the degree to which a person's religious contact is precluded and the resulting impact on his religious expression, as measured from the

⁹⁴ Brief for Mary Doe Brief at 23, *Doe v. Nixon*, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

⁹⁵ *Needville*, 611 F.3d at 261.

⁹⁶ Brief for Mary Doe Brief at 23.

⁹⁷ *See supra* section II.

⁹⁸ *Id.*

⁹⁹ *A.A. v. Needville*, 611 F.3d 248.

¹⁰⁰ *Id.*

¹⁰¹ Brief for Mary Doe Brief at 23, *Doe v. Nixon*, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

¹⁰¹ *A.A. v. Needville*, 611 F.3d 248, 264 (5th Cir. 2010).

person's perspective, not from the governments. This inquiry is case-by-case and fact specific and must take into account individual circumstances.¹⁰²

In the Needville case, the Court said that the restriction on the plaintiff's hair was real because it precluded the plaintiff from expressing his religious belief and subjected him to shame and guilt.¹⁰³

Similarly, Missouri's lack of diversity in its booklet describing the various beliefs of when life begins fails to acknowledge the religious belief Doe holds.¹⁰⁴ Doe was implicitly denied from expressing her belief when her note describing her religious views and exemption from the Informed Consent Law was rejected by the abortion provider due to Missouri's Law.¹⁰⁵ Doe was then subjected to shame and guilt because her religious belief differed from that of the Missouri Tenet, yet she was still required to acknowledge that tenet.¹⁰⁶

Furthermore, Doe was substantially burdened because she was required to participate in the requirements of the statute, despite their direct contradiction to her religious beliefs.¹⁰⁷ This included paying for both the ultrasound as well as lodging for 72 hours before she was able to obtain the abortion.¹⁰⁸ These actions, in addition to the guilt and shame she felt for not believing the tenet provided in the booklet, substantially burdened her religious belief.¹⁰⁹

3. *No Compelling Government Interest*

Even if the plaintiff can prove the two-part Free Exercise test discussed above, the Government can still prevail in the claim, but it bears the burden of showing that (1) the law actually furthers a compelling interest in the plaintiff's case and (2) the law is the least restrictive means of furthering that interest.¹¹⁰ The plaintiff's right

¹⁰² Needville, 611 F.3d at 261.

¹⁰³ *Id.* at 266.

¹⁰⁴ MO. REV. STAT. § 188.027.1(2) (2018).

¹⁰⁵ *Supra* Section II.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Brief for Mary Doe Brief at 21-22, *Doe v. Nixon*, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

to free exercise is not absolute to be able to engage in any contact.¹¹¹ The government can establish a compelling interest that justifies the burden that the statute places on the plaintiff, and can show that the statute has adopted the least restrictive means of achieving that interest then the law may still be held to be constitutional. “Because religious exercise is a fundamental right justification can be found only in interests of the highest order.”¹¹² The Government cannot rely on general platitudes, “but must show by specific evidence that the adherent’s religious practices jeopardize its stated interests”¹¹³

Meaning, when a state sets regulations for obtaining an abortion and those regulations substantially burden the free exercise of an individual’s religion they must serve a compelling interest. “To satisfy this requirement . . . courts must look beyond broadly formulated interests justifying the general applicability of government mandates to scrutinize the asserted harm of granting specific exemptions to particular religious claimants.”¹¹⁴

The compelling interest of Missouri in this case is to ensure that the woman obtaining the abortion is doing so voluntarily free of coercion and is fully informed about the abortion.¹¹⁵ However, this compelling interest was satisfied when Doe presented the abortion provider with a note detailing her understanding of the abortion regulations and acknowledged that her decision to abort was completely voluntary without coercion.¹¹⁶ Seeing as the compelling interest was satisfied through other means, the Government failed to pass strict scrutiny. Allowing her to be exempt from the regulations would not have caused the state’s interest harm because the interest was met through other means.

This issue also addresses the second part of the strict scrutiny test: that the law is the least restrictive means of furthering that compelling interest.¹¹⁷ The law clearly did not provide for the least restrictive means possible in furthering a compelling state interest because the compelling interest was already met by Doe’s acknowledgment via her note.¹¹⁸ However, she was still wrongfully

¹¹¹ Needville, 611 F.3d at 266.

¹¹² *Id.*

¹¹³ *Id.* at 268.

¹¹⁴ 295 S.W.3d at 306.

¹¹⁵ MO. REV. STAT. § 188.027.11

¹¹⁶ *Supra* Section II.

¹¹⁷ Brief for Mary Doe Brief at 21-22, Doe v. Nixon, (No. WD80387), <https://www.courts.mo.gov/file.jsp?id=119839>.

¹¹⁸ *Supra* Section II

subjected to the substantial burden regardless of her fulfillment of the state's interest.¹¹⁹

IV. CONCLUSION

In conclusion, the Missouri Supreme Court should find that the Informed Consent Laws are unconstitutional on their face because the law violates both the Establishment Clause and Free Exercise Clause contained within both the Missouri and United States constitutions. Absent finding a compelling interest with means narrowly tailored to achieving that government interest, Missouri cannot succeed in this claim. Should the Missouri court not find that this law violates the clauses, the Supreme Court will be faced with whether to answer the question of the law's constitutionality; a task it explicitly declined to take on in the past, but it would now face in light of its recent decision under Hobby Lobby.

¹¹⁹ *Id.*