ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

June 26, 2024

Dylan Winters
Via email: records@americanoversight.org

RE: Sunshine Request - All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) the Office of the Attorney General officials listed below, and (b) any of the external entities listed below, or anyone communicating on their behalf (including, but not limited to, from email addresses ending in the listed domains). Office of the Attorney General Officials: a. Andrew Bailey, Attorney General b. Jay Atkins, Chief of Staff c. Raymond Wagner, First Assistant Attorney General d. William Corrigan, Deputy Attorney General External Entities: a. Alliance Defending Freedom (adflegal.org) b. Do No Harm (donoharmmedicine.org) c. Joe Ortwerth, or anyone communicating on behalf of Family Policy Alliance (familypolicyalliance.com) d. American College of Pediatricians or ACPeds (acpeds.org) e. Quentin Van Meter (kidendo@comcast.net) f. American Family Association (afa.net)...

Dear Mr. Winters,

In response to your above-referenced request received by our custodian of records on September 20, 2023, we are enclosing a link to box.com which contains the final responsive documents. We now consider this request file complete and closed.

Box.com link:
https://ago.box.com/s/190b92k154t5um5f147mtbgqp5zlb442

Sincerely,

/s/ Maggie Wayman

Maggie Wayman | Custodian of Records
Missouri Attorney General's Office

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]
Cc: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Wed 7/5/2023 8:53:58 AM (UTC-05:00)
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific!Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?
Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354
Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM
To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:
Thanks for reaching out! Absolutely. Let's touch base tomorrow morning re timing.
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi Maddie....I received Madeline's out of of office reply so I'm passing this along -- thanks!

Sent from my iPhone
Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.

AMERICAN OVERSIGHT

Thanks,
JP Duffy

Vice President of Communications
Family Research Council
202-679-6800

View this email in your browser

FOR IMMEDIATE RELEASE

July 4, 2023

Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

AMERICAN OVERSIGHT

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The judge specifically found:

- "[V]irtually all of the free speech suppressed was conservative free speech."
- At least 22 times, the White House engaged in "unrelenting pressure" against tech companies."White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied."
- "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019."
- Facebook suppressed information at the demand of the White House, the FBI, and other federal agents even though the information "did not violate Facebook's policies"

AMERICAN OVERSIGHT

and thus ordinarily would not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"

- Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
- After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
- The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
- The Department of Homeland Security "met with social-media companies to both inform and pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
- DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
- DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
- Federal defendants did not just censor speech directly; they also caused social media companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech."
- Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its power to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

AMERICAN OVERSIGHT

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing more than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read here: https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

Share Tweet Forward

Keep up with the Attorney General's Office

This email was sent to jpd@frc.org

why did I get this? unsubscribe from this list update subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

AMERICAN OVERSIGHT

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: Young Lawyers Academy[allianceevents@adflegal.org]
Sent: Mon 6/26/2023 8:54:19 AM (UTC-05:00)
Subject: Letter of Recommendation

DearJay Atkins,

Kelseyhas applied for admission to the Alliance Defending Freedom Young Lawyers Academy and has requested that you submit a letter of recommendation on their behalf. Your recommendation is a vital part of the application process. Your thoughtful and candid responses will assist us in our evaluation of this applicant. Please note that the application deadline is**Monday, July 31, 2023**.

In your letter of recommendation, please include the following:

- The length and nature of your relationship with the applicant.
- Your assessment of the applicant's professional abilities.
- Reflections of the applicant's character, including examples of personal integrity and responsibility.
- If a spiritual recommender, please address the applicant's commitment to their Christian faith.

You can submit the letter of recommendation by clicking on the following link: Click here.

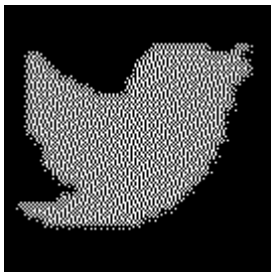
If you have any issues when submitting the letter of recommendation, please contact us atAllianceEvents@ADFlegal.org.

For more information on the Young Lawyers Academy, please visit our websitehere.

Sincerely,

The Young Lawyers Academy Team

AMERICAN OVERSIGHT



AMERICAN
OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]
Cc: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Wed 7/5/2023 5:13:51 PM (UTC-05:00)
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment
twitter.2.ico

Here are the rest of the video links:

YouTube

Rumble

Dropbox

Thanks again!

On Jul 5, 2023, at 5:29 PM, JP Duffy <jpd@frc.org> wrote:

Great interview -- thank you!

"We've uncovered a vast censorship enterprise emanating from the very top levels of the White House...to silence Americans' free speech." @AGAndrewBailey on a temp. injunction blocking the Biden administration from colluding w/ Big Tech for censorship. https://t.co/Go9RILN8Nt

<twitter.2.ico> Family Research Council
twitter.com

On Jul 5, 2023, at 9:56 AM, Green, Maddie <Maddie.Green@ago.mo.gov> wrote:

Great! Yes, that number is fine. Thank you!
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Wednesday, July 5, 2023 8:54 AM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific! Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the

AMERICAN OVERSIGHT

connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?
Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354
Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM
To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:
Thanks for reaching out! Absolutely. Let's touch base tomorrow morning re timing.
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi Maddie....I received Madeline's out of office reply so I'm passing this along -- thanks!

Sent from my iPhone
Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.

Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

AMERICAN OVERSIGHT

View this email in your browser

FOR IMMEDIATE RELEASE

July 4, 2023
Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to free speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The judge specifically found:

- "[V]irtually all of the free speech suppressed was conservative free speech."
- At least 22 times, the White House engaged in "unrelenting pressure" against tech companies."White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed a

AMERICAN OVERSIGHT

what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the worl the social-media companies apparently complied."

- "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had t laptop in its possession since December 2019."
- Facebook suppressed information at the demand of the White House, the FBI, and other federal ager even though the information "did not violate Facebook's policies" and thus ordinarily would not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
- Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
- After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
- The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
- The Department of Homeland Security "met with social-media companies to both inform and pressu them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
- DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
- DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
- Federal defendants did not just censor speech directly; they also caused social media companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech.
- Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its power to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court grante their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather document and depose witnesses from the Biden Administration.

AMERICAN OVERSIGHT

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing mo than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech socia media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read her https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

<image002.jpg> Share <image002.jpg> Tweet <image002.jpg> Forward

Keep up with the Attorney General's Office

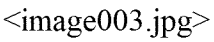
<image002.jpg> <image002.jpg> <image002.jpg>

AMERICAN OVERSIGHT

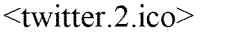
This email was sent to jpd@frc.org

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA



This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.



AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT


AMERICAN
OVERSIGHT


AMERICAN
OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]
Cc: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Wed 7/5/2023 4:29:37 PM (UTC-05:00)
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Great interview -- thank you!

> "We've uncovered a vast censorship enterprise emanating from the very top levels of the White House...to silence Americans' free speech." @AGAndrewBailey on a temp. injunction blocking the Biden administration from colluding w/ Big Tech for censorship. https://t.co/Go9RILN8Nt
>
> Family Research Council
> twitter.com

On Jul 5, 2023, at 9:56 AM, Green, Maddie <Maddie.Green@ago.mo.gov> wrote:

Great! Yes, that number is fine. Thank you!
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Wednesday, July 5, 2023 8:54 AM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific!Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?
Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354
Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM

AMERICAN OVERSIGHT

To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:

Thanks for reaching out! Absolutely. Let's touch base tomorrow morning re timing.

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

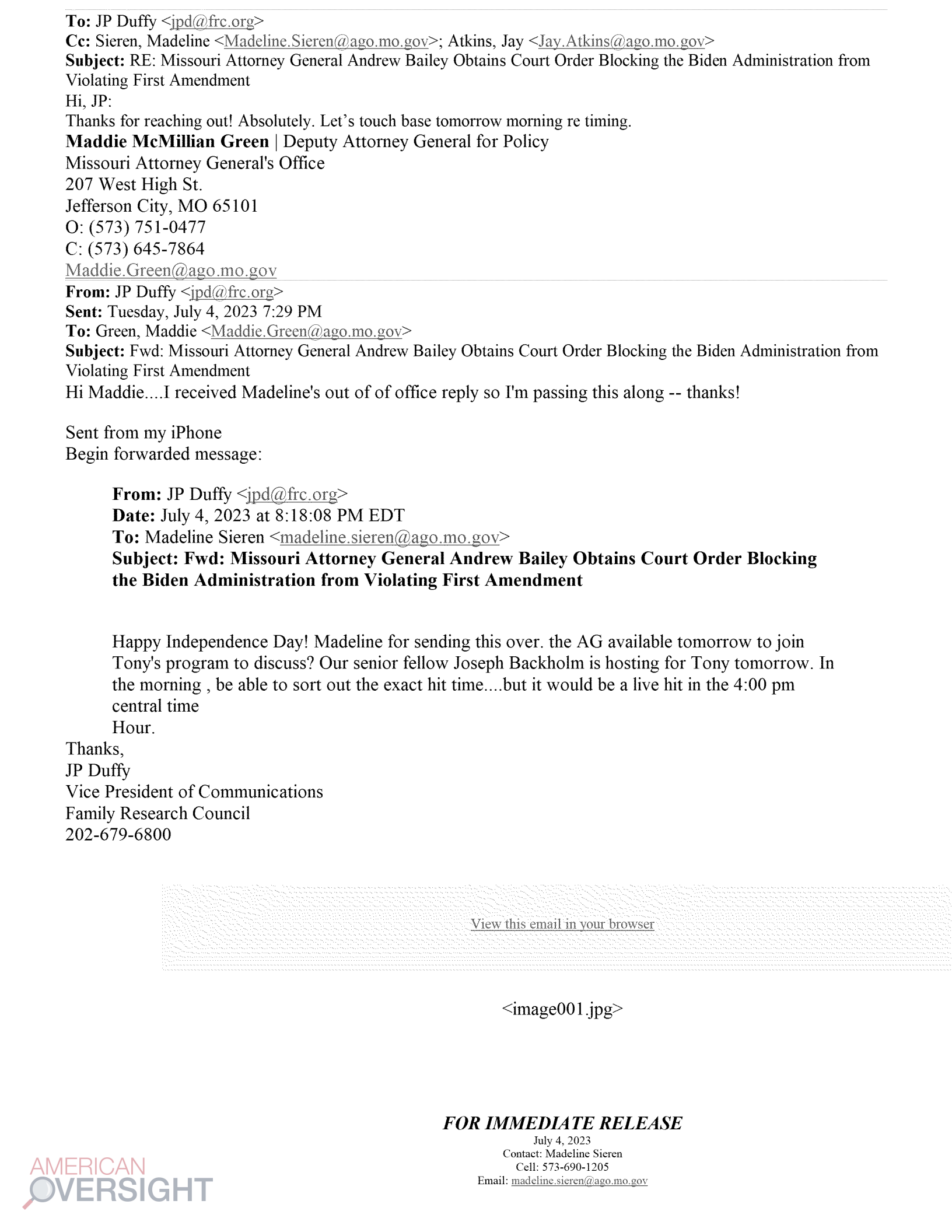
Hi Maddie....I received Madeline's out of office reply so I'm passing this along -- thanks!

Sent from my iPhone
Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.

Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

View this email in your browser



FOR IMMEDIATE RELEASE
July 4, 2023
Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

AMERICAN OVERSIGHT

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The judge specifically found:

- "[V]irtually all of the free speech suppressed was conservative free speech."
- At least 22 times, the White House engaged in "unrelenting pressure" against tech companies."White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied."
- "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019."
- Facebook suppressed information at the demand of the White House, the FBI, and other federal agents even though the information "did not violate Facebook's policies" and thus ordinarily would not have

AMERICAN OVERSIGHT

been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"

- Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
- After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
- The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
- The Department of Homeland Security "met with social-media companies to both inform and pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
- DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
- DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
- Federal defendants did not just censor speech directly; they also caused social media companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech."
- Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its power to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing more than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech social media companies to violate Americans' right to free speech.

AMERICAN OVERSIGHT

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read here:

https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

<image002.jpg> Share <image002.jpg> Tweet <image002.jpg> Forward

Keep up with the Attorney General's Office

<image002.jpg> <image002.jpg> <image002.jpg>

This email was sent to jpd@frc.org

why did I get this? unsubscribe from this list update subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

<image003.jpg>

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]
Cc: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Mon 7/10/2023 2:43:21 PM (UTC-05:00)
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi all…is AG Bailey available to join Tony Perkins on his program today at 4:20 PM Central Time for a live, 7 minute interview?Tony wants to get his thoughts on the federal judge denying the DOJ's motion to stay the injunction:https://thehill.com/regulation/court-battles/4089018-louisiana-judge-denies-doj-motion-to-stay-order-in-social-media-case/
Thanks,
JP Duffy
Family Research Council
202-679-6800

From: JP Duffy
Sent: Wednesday, July 5, 2023 6:14 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Here are the rest of the video links:
YouTube
Rumble
Dropbox
Thanks again!

> On Jul 5, 2023, at 5:29 PM, JP Duffy <jpd@frc.org> wrote:
>
> Great interview -- thank you!
>
> "We've uncovered a vast censorship enterprise emanating from the very top levels of the White House...to silence Americans' free speech." @AGAndrewBailey on a temp. injunction blocking the Biden administration from colluding w/ Big Tech for censorship. https://t.co/Go9RILN8Nt
>
> <twitter.2.ico> Family Research Council
> twitter.com
>
> On Jul 5, 2023, at 9:56 AM, Green, Maddie <Maddie.Green@ago.mo.gov> wrote:
>
> Great! Yes, that number is fine. Thank you!
> **Maddie McMillian Green** | Deputy Attorney General for Policy
> Missouri Attorney General's Office
> 207 West High St.
> Jefferson City, MO 65101
> O: (573) 751-0477
> C: (573) 645-7864
> Maddie.Green@ago.mo.gov
>
> ---
>
> **From:** JP Duffy <jpd@frc.org>
> **Sent:** Wednesday, July 5, 2023 8:54 AM
> **To:** Green, Maddie <Maddie.Green@ago.mo.gov>
> **Cc:** Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>

AMERICAN OVERSIGHT

Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific!Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?

Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354

Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM
To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:

Thanks for reaching out! Absolutely. Let's touch base tomorrow morning re timing.

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi Maddie....I received Madeline's out of office reply so I'm passing this along -- thanks!

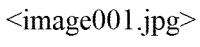
Sent from my iPhone
Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.
> Thanks,
> JP Duffy

AMERICAN OVERSIGHT

Vice President of Communications
Family Research Council
202-679-6800

View this email in your browser



FOR IMMEDIATE RELEASE

July 4, 2023

Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The

AMERICAN OVERSIGHT

judge specifically found:

1. "[V]irtually all of the free speech suppressed was conservative free speech."
2. At least 22 times, the White House engaged in "unrelenting pressure" against tech companies. "White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied."
3. "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019."
4. Facebook suppressed information at the demand of the White House, the FBI, and other federal agents even though the information "did not violate Facebook's policies" and thus ordinarily would not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
5. Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
6. After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
7. The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
8. The Department of Homeland Security "met with social-media companies to both inform and pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
9. DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
10. DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
11. Federal defendants did not just censor speech directly; they also caused social media companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech."
12. Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

AMERICAN OVERSIGHT

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its power to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing more than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read here:
https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

<image002.jpg> Share <image002.jpg> Tweet <image002.jpg> Forward

Keep up with the Attorney General's Office

<image002.jpg> <image002.jpg> <image002.jpg>

AMERICAN OVERSIGHT

This email was sent to jpd@frc.org

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Wed 7/12/2023 11:16:28 AM (UTC-05:00)
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

HI all…just flagging for you that we feature the AG's interview in the Washington Stand:
https://washingtonstand.com/news/missouri-ag-biden-collusion-with-big-tech-is-worst-free-speech-violation-in-nations-history
Thanks!

From: JP Duffy
Sent: Monday, July 10, 2023 6:32 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>; Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

That was a great interview! so much. Here are the video links:
YouTube
Rumble
Dropbox

On Jul 10, 2023, at 3:43 PM, JP Duffy <jpd@frc.org> wrote:

Hi all…is AG Bailey available to join Tony Perkins on his program today at 4:20 PM Central Time for a live, 7 minute interview?Tony wants to get his thoughts on the federal judge denying the DOJ's motion to stay the injunction:https://thehill.com/regulation/court-battles/4089018-louisiana-judge-denies-doj-motion-to-stay-order-in-social-media-case/
Thanks,
JP Duffy
Family Research Council
202-679-6800

From: JP Duffy
Sent: Wednesday, July 5, 2023 6:14 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Here are the rest of the video links:
YouTube
Rumble
Dropbox
Thanks again!

On Jul 5, 2023, at 5:29 PM, JP Duffy <jpd@frc.org> wrote:

Great interview -- thank you!

> "We've uncovered a vast censorship enterprise emanating from the very top levels of the White House...to silence Americans' free speech."
> @AGAndrewBailey on a temp. injunction blocking the Biden administration from colluding w/ Big Tech for censorship.
> https://t.co/Go9RILN8Nt
>
> <twitter2.ico> Family Research Council
> twitter.com

AMERICAN OVERSIGHT

On Jul 5, 2023, at 9:56 AM, Green, Maddie <Maddie.Green@ago.mo.gov> wrote:

Great! Yes, that number is fine. Thank you!

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Wednesday, July 5, 2023 8:54 AM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific!Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?

Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354

Thanks,

JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM
To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:

Thanks for reaching out! Absolutely. Let’s touch base tomorrow morning re timing.

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

AMERICAN OVERSIGHT

Hi Maddie....I received Madeline's out of of office reply so I'm passing this along -- thanks!

Sent from my iPhone
Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.

Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

View this email in your browser

<image001.jpg>

FOR IMMEDIATE RELEASE
July 4, 2023
Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Bid Administration from Violating First Amendment

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the Un States District Court for the Western District of Louisiana granted his motion to block top officials in federal government from continuing to violate the First Amendment rights of millions of Americans. T judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack aga free speech in United States' history," that the Biden administration has "blatantly ignored the First

AMERICAN OVERSIGHT

Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the bigge violation of the First Amendment in our nation's history,today's court order is a huge win for the right freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall separation between tech and state to preserve our First Amendment right to free, fair, and open debate Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities judge specifically found:

1. "[V]irtually all of the free speech suppressed was conservative free speech."
2. At least 22 times, the White House engaged in "unrelenting pressure" against tech compani "White House Defendants engaged in coercion to induce social-media companies to suppress fr speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the n powerful office in the world, the social-media companies apparently complied."
3. "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. " the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook although the FBI had the laptop in its possession since December 2019."
4. Facebook suppressed information at the demand of the White House, the FBI, and other fed agents even though the information "did not violate Facebook's policies" and thus ordinarily wo not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
5. Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
6. After President Biden accused social media companies of "killing people," Facebook emaile Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the O of Surgeon General's and White House's requests."
7. The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down protected free speech."

AMERICAN OVERSIGHT

8. The Department of Homeland Security "met with social-media companies to both inform an pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority monitor and suppress protected free speech posted on social media."

9. DHS "Defendants believe they had a mandate to control the process of acquiring knowledg

10. DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."

11. Federal defendants did not just censor speech directly; they also caused social media comp to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to supp free speech."

12. Although much of the past suppression involved COVID and elections, federal officials "h also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism a "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its po to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Cour granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to g documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Dan Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, ci more than 1,400 facts showing that top officials in the federal government coerced and colluded with b tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be r here:
https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

<image002.jpg> Share <image002.jpg> Tweet <image002.jpg> Forward

AMERICAN OVERSIGHT

Keep up with the Attorney General's Office

<image002.jpg> <image002.jpg> <image002.jpg>

This email was sent to jpd@frc.org

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

<image003.jpg>

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

<twitter.2.ico>

AMERICAN OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: JP Duffy[jpd@frc.org]
Sent: Mon 7/10/2023 5:31:59 PM (UTC-05:00)
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

That was a great interview! so much. Here are the video links:
YouTube

Rumble

Dropbox

On Jul 10, 2023, at 3:43 PM, JP Duffy <jpd@frc.org> wrote:

Hi all…is AG Bailey available to join Tony Perkins on his program today at 4:20 PM Central Time for a live, 7 minute interview?Tony wants to get his thoughts on the federal judge denying the DOJ's motion to stay the injunction:https://thehill.com/regulation/court-battles/4089018-louisiana-judge-denies-doj-motion-to-stay-order-in-social-media-case/
Thanks,
JP Duffy
Family Research Council
202-679-6800

From: JP Duffy
Sent: Wednesday, July 5, 2023 6:14 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: Re: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Here are the rest of the video links:
YouTube
Rumble
Dropbox
Thanks again!

On Jul 5, 2023, at 5:29 PM, JP Duffy <jpd@frc.org> wrote:

Great interview -- thank you!

"We've uncovered a vast censorship enterprise emanating from the very top levels of the White House...to silence Americans' free speech."
@AGAndrewBailey on a temp. injunction blocking the Biden administration from colluding w/ Big Tech for censorship.
https://t.co/Go9RILN8Nt

<twitter.2.ico> Family Research Council
twitter.com

AMERICAN OVERSIGHT

On Jul 5, 2023, at 9:56 AM, Green, Maddie <Maddie.Green@ago.mo.gov> wrote:

Great! Yes, that number is fine. Thank you!

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Wednesday, July 5, 2023 8:54 AM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Terrific!Yes, lets lock this in for a live hit time at 4:05 PM Central Time today….this will be about a 10 minute interview.Below is the zoom video link to connect with…the connection window will open at 4:00 PM Central Time…and then the show goes live at 4:05 PM CT.Our senior fellow Joseph Backholm is hosting for Tony.Should we use (573) 645-7864 as the back up number?

Join Zoom Meeting
https://us06web.zoom.us/j/82964768184?pwd=Q1NMbXl5ZEhrdTBpSlZrQTZLSlJEdz09
Meeting ID: 829 6476 8184
Passcode: 945354

Thanks,

JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Tuesday, July 4, 2023 9:12 PM
To: JP Duffy <jpd@frc.org>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>
Subject: RE: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi, JP:

Thanks for reaching out! Absolutely. Let’s touch base tomorrow morning re timing.

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: JP Duffy <jpd@frc.org>
Sent: Tuesday, July 4, 2023 7:29 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment

Hi Maddie....I received Madeline's out of office reply so I'm passing this along -- thanks!

Sent from my iPhone

AMERICAN OVERSIGHT

Begin forwarded message:

> **From:** JP Duffy <jpd@frc.org>
> **Date:** July 4, 2023 at 8:18:08 PM EDT
> **To:** Madeline Sieren <madeline.sieren@ago.mo.gov>
> **Subject: Fwd: Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment**
>
> Happy Independence Day! Madeline for sending this over. the AG available tomorrow to join Tony's program to discuss? Our senior fellow Joseph Backholm is hosting for Tony tomorrow. In the morning , be able to sort out the exact hit time....but it would be a live hit in the 4:00 pm central time
> Hour.

Thanks,
JP Duffy
Vice President of Communications
Family Research Council
202-679-6800

View this email in your browser

<image001.jpg>

FOR IMMEDIATE RELEASE

July 4, 2023
Contact: Madeline Sieren
Cell: 573-690-1205
Email: madeline.sieren@ago.mo.gov

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Bid Administration from Violating First Amendment

JEFFERSON CITY, Mo. - Missouri Attorney General Andrew Bailey announced today that the Un States District Court for the Western District of Louisiana granted his motion to block top officials in federal government from continuing to violate the First Amendment rights of millions of Americans. T judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack aga free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

AMERICAN OVERSIGHT

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the bigge violation of the First Amendment in our nation's history,today's court order is a huge win for the right freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall separation between tech and state to preserve our First Amendment right to free, fair, and open debate Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities judge specifically found:

1. "[V]irtually all of the free speech suppressed was conservative free speech."
2. At least 22 times, the White House engaged in "unrelenting pressure" against tech compani "White House Defendants engaged in coercion to induce social-media companies to suppress fr speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the n powerful office in the world, the social-media companies apparently complied."
3. "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. " the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook although the FBI had the laptop in its possession since December 2019."
4. Facebook suppressed information at the demand of the White House, the FBI, and other fed agents even though the information "did not violate Facebook's policies" and thus ordinarily wo not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
5. Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
6. After President Biden accused social media companies of "killing people," Facebook emailed Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the O of Surgeon General's and White House's requests."
7. The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down protected free speech."
8. The Department of Homeland Security "met with social-media companies to both inform an pressure them to censor content protected by the First Amendment." It then "expanded the word

AMERICAN OVERSIGHT

'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority monitor and suppress protected free speech posted on social media."

9. DHS "Defendants believe they had a mandate to control the process of acquiring knowledg

10. DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."

11. Federal defendants did not just censor speech directly; they also caused social media comp to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to supp free speech."

12. Although much of the past suppression involved COVID and elections, federal officials "h also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism a "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

The judge ordered the Biden administration to stop this "almost dystopian scenario" of "us[ing] its po to silence the opposition."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Cour granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to g documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Dan Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, ci more than 1,400 facts showing that top officials in the federal government coerced and colluded with b tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be r here:
https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

<image002.jpg> Share <image002.jpg> Tweet <image002.jpg> Forward

Keep up with the Attorney General's Office

AMERICAN OVERSIGHT

<image002.jpg> <image002.jpg> <image002.jpg>

This email was sent to jpd@frc.org

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

<image003.jpg>

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

<twitter.2.ico>

AMERICAN OVERSIGHT



AMERICAN
OVERSIGHT

To: Denise Burke[DBurke@adflegal.org]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Thur 4/6/2023 6:58:49 PM (UTC-05:00)
Subject: Re: Proposed Missouri Constitutional Amendments

Thank you Denise! Ray

Sent from my iPhone

> On Apr 6, 2023, at 6:22 PM, Denise Burke <DBurke@adflegal.org> wrote:
>
> Ray:
> ADF has reviewed and analyzed all 11 referenda proposals seeking to amend the Missouri Constitution to include a "right" to abortion. I know that your office is looking at these as well, so I wanted to share our analysis with you. The first attachment (2024-83) contains most of the arguments contained in the other files.
> Take care,
> Denise
>
>
> <logo_abdfb0ec-e06e-407a-a721-cd0e4f742400.png>
> Denise Burke
> Sr. Counsel
> +1 480 444 0020
> +1 480 388 8037Dial)
> DBurke@adflegal.org
> ADFlegal.org
>
>
> <Missouri 2024-83 (2024).pdf>
> <Missouri 2024-77 (2024).pdf>
> <Missouri 2024-78 (2024).pdf>
> <Missouri 2024-79 (2024).pdf>
> <Missouri 2024-80 (2024).pdf>
> <Missouri 2024-81 (2024).pdf>
> <Missouri 2024-82 (2024).pdf>
> <Missouri 2024-83 (2024).pdf>
> <Missouri 2024-84 (2024).pdf>
> <Missouri 2024-85 (2024).pdf>
> <Missouri 2024-86 (2024).pdf>
> <Missouri 2024-87 (2024).pdf>

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-83 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-77 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … entails the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortion, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to "reproductive freedom." This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, and health and safety standards for abortion facilities. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite the assertion to the contrary in Section 6). For example, Section 5 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also be required to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

Under the proposed amendment, Missouri taxpayer dollars could be required to fund abortion, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for controversial and dangerous procedures.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for abortion, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-78 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortions, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-79 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortion, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to "reproductive freedom." This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, and health and safety standards for abortion facilities. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 6's assertion to the contrary). For example, Section 5 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 6 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

Under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for controversial and dangerous procedures.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-80 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only

AMERICAN OVERSIGHT

further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-81 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only

AMERICAN OVERSIGHT

further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 8's assertion to the contrary). For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 8 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-82 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," Missouri voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-83 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-84 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 7's assertion to the contrary). For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 7 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-85 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 8's assertion to the contrary). For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 8 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-86 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

AMERICAN OVERSIGHT

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-87 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

AMERICAN OVERSIGHT

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 7's assertion to the contrary). For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 7 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

To: Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Denise Burke[DBurke@adflegal.org]
Sent: Thur 4/6/2023 6:22:01 PM (UTC-05:00)
Subject: Proposed Missouri Constitutional Amendments
Missouri 2024-83 (2024).pdf
Missouri 2024-77 (2024).pdf
Missouri 2024-78 (2024).pdf
Missouri 2024-79 (2024).pdf
Missouri 2024-80 (2024).pdf
Missouri 2024-81 (2024).pdf
Missouri 2024-82 (2024).pdf
Missouri 2024-83 (2024).pdf
Missouri 2024-84 (2024).pdf
Missouri 2024-85 (2024).pdf
Missouri 2024-86 (2024).pdf
Missouri 2024-87 (2024).pdf

Ray:
ADF has reviewed and analyzed all 11 referenda proposals seeking to amend the Missouri Constitution to include a "right" to abortion. I know that your office is looking at these as well, so I wanted to share our analysis with you. The first attachment (2024-83) contains most of the arguments contained in the other files.
Take care,
Denise

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

Denise Burke
Sr. Counsel
+1 480 444 0020
+1 480 388 8037Dial)
DBurke@adflegal.org
ADFlegal.org

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 0 9 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 1 (2024-077)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:17

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as"The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which entails the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures other than as required by federal law.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 2 (2024-078)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:18

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise be subject to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

7. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

CORE/3515221.0006/180601163.1

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 3 (2024-079)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:19
SECRETARY OF STATE

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

_____ My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 4 (2024-080)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:20
SECRETARY OF STATE

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 5 (2024-081)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:21

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting any individual in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 0 9 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 6 (2024-082)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

24-082

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAY -8 PM 3:22

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 7 (2024-083)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Printed Name of Affiant

_____ Street Address of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:__

(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 8 (2024-084)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

_____ My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 9 (2024-085)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:25

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

_____ My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 10 (2024-086)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:26
SECRETARY OF STATE

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
STATE AUDITORS OFFICE

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 11 (2024-087)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:
We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:27

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Street Address of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____
Address of Notary

My Commission Expires:__
(Seal)

AMERICAN OVERSIGHT

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

CORE/3515221.0006/180587553.1

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 1 (2024-077)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 1 (2024-077)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 MAR 7 PM 3:17 T236295

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAY -8 PM 3:17

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as"The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which entails the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures other than as required by federal law.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 2 (2024-078)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 2 (2024-078)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -3 PM 3:13

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)
P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T236295

2023 MAR 7 PM 3: 18

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:18

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise be subject to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

7. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 3 (2024-079)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 3 (2024-079)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T236295

2023 MAR 7 PM 3:19

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -1 PM 3:19

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 4 (2024-080)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

2023 MAR -8 PM 3:20

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

2023 MAR 0 PM 3:20

Office Use: T236295

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 NOV -1 P1 3:20

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 5 (2024-081)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 5 (2024-081)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

2023 MAR -8 PM 3:21

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 MAR -8 PM 3:21

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -6 PM 3:21

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting any individual in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 6 (2024-082)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 6 (2024-082)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:22

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James MD.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T236295

2023 MAR -8 PM 3:22

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAY -8 PM 3:22

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 7 (2024-083)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 7 (2024-083)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

2023 MAR -8 PM 3:24

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 MAR 8 PM 3:24

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 NOV 15 – P 4 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 8 (2024-084)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 8 (2024-084)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:21

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
2023 MAR -8 PM 3:24

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 9 (2024-085)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 9 (2024-085)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

RECEIVED
2023 MAR -8 PM 3:25

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
T236295
2023 MAR -8 PM 3:25

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:25

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 10 (2024-086)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 10 (2024-086)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:25

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T226295 2023 MAR -8 PM 3:26

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

RECEIVED
2023 MAR -8 PM 3:26

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 11 (2024-087)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 11 (2024-087)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:27

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
T23629 2023 MAR -8 PM 3:27

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:27

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 174-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-077.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 175-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-078.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 176-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-079.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 177-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-080.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 178-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-081.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 179-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-082.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 180-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-083.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 181-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-084.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 182-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-085.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 183-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-086.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

March 20, 2023

OPINION LETTER NO. 184-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated March 9, 2023, for our review under § 116.332, RSMo of the sufficiency as to form of an initiative petition to amend Article I, of the Missouri Constitution submitted by Anna Fitz-James, 2024-087.

We approve the petition as to form, but § 116.332 gives the Secretary of State final authority to approve or reject the petition. Therefore, our approval of the form of the petition does not preclude you from rejecting the petition.

Because our review of the petition is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, because our review is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the petition or of the objectives of its proponents, or the expression of any view respecting the adequacy or inadequacy of the petition generally.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-077)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-078)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-079)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-080)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-081)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-082)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-083)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-084)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-085)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-086)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

TO: **Sheri Hoffman**

DATE: **March 16, 2023**

FROM: **Diana Haines**

Fiscal Note: **Initiative petition – Proposed constitutional amendment to Article I (2024-087)**

The Attorney General's Office expects that, to the extent that the enactment of this proposal would result in increased litigation, the Office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, the Office may be required to request additional appropriations.

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-077 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-077)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-077 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-077IP proposes a constitutional amendment to Article I of the Missouri Constitution. The amendment would create "The Right to Reproductive Freedom Initiative," which entails the "right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions."

Section 36.3 states "the right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling government interest achieved by the least restrictive means. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making."

AMERICAN OVERSIGHT

The amendment would also provide protections from penalization, prosecution, or adverse action based on pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Protections would also be in place for healthcare providers who assist a consenting person in exercising their right to reproductive freedom.

The amendment limits the state government's authority to restrict reproductive health, including abortion care. The impact on the Department of Health and Senior Services will largely depend on the court's interpretation of the constitutional language and the extent the court determines that licensing and regulation of abortion facilities is overly restrictive to reproductive freedom. The court's interpretation has the potential to:

- Void all or most of the current statutes outlined in Chapter 188 that regulate abortion;
- Remove the Department's authority to license abortion facilities;
- Remove the Department's authority to regulate abortion facilities;
- Negate promulgated rules surrounding abortion; and/or
- Expand the practice of abortion and number of abortion facilities in Missouri; however, by how far is unpredictable.

The General Assembly will have the ability to enact laws that regulate abortion; however, there will be restrictions based on the amendment, as well as the court's interpretation of the restrictive nature of licensure and regulation.

Due to the various factors stated above, the proposed constitutional amendment has an unknown impact on their department.

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I version 1.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

AMERICAN OVERSIGHT

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-077 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission on this initiative petition.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered

AMERICAN OVERSIGHT

fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-077 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I version 1.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

AMERICAN OVERSIGHT

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-077 proposing to amend Article I version 1. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-078 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-078)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-078 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-078 is identical to 24-077 with the following exception:

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Comments:

The fiscal impact for 24-078 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-078 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact is anticipated to their office.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-078 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-078 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

March 29, 2023

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-079 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-079)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-079 is identical to 24-077 with the following exception:

Removes "other than as required by federal law" from Section 36.6.

Comments:

The fiscal impact for 24-079 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-079 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-079 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I version 3.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-079 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-080 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-080)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-080 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-080 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Comments:

The fiscal impact for 24-080 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-080 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-080 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-080 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

  - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
  - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

    - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
    - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
    - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
    - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
    - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

      - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-081 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-081)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-081 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-081 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall

AMERICAN OVERSIGHT

permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Comments:

The fiscal impact for 24-081 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-081 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-081 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-081 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-082 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-082)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-082 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-082 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-082 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-082 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-082 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-082 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-083 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-083)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-083 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-083 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.:

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-083 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-083 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate i**ndicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-083 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-083 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia, ,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-084 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-084)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-084 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-084 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's las menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077).

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-084 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-084 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-084 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-084 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have has no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-085 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-085)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-085 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-085 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Adds definition for Fetal Viability in Section 36.10(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-085 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-085 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-085 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-085 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-086 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-086)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-086 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-086 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes Section 36.6 "Nothing in this Section requires government funding of abortion other than as required by federal law"

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.8(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-086 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-086 has no fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-086 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-086 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-087 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-087)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-087 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-087 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077)

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the .fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-087 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-087 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-087 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-087 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY
April 10, 2023

OPINION LETTER NO. 206-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-077. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in Missouri, overturning dozens of existing state laws. The actual potential fiscal impact

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

AMERICAN OVERSIGHT

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true,

AMERICAN OVERSIGHT

statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-205

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 207-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-078. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 208-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-079. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-207

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 209-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-080. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 210-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-081. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-209

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 211-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-082. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 212-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-083. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-211

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 213-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-084. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-212

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 214-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-085. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-213

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 215-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-086. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-214

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 10, 2023

OPINION LETTER NO. 216-2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letter of March 29, 2023, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Anna Fitz-James, 2024-087. The fiscal note summary that you submitted reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

This office has independently reviewed the submission your office received which was attached to the proposed fiscal note summary. Under § 116.175.4, RSMo, the Attorney General is tasked to review the "legal content and form of the fiscal note summary prepared by the state auditor[.]" Section 116.175.3 requires that the fiscal note and fiscal note summary "state the measure's estimated cost or savings, if any, to state and local governmental entities." If the Attorney General determines that "the fiscal note or the fiscal note summary summary does not satisfy the requirements of [§ 116.175, RSMo], the fiscal note and the fiscal note summary shall be returned to the auditor for revision." § 116.175.5, RSMo.

The Attorney General's Office is returning the fiscal note and fiscal note summary because the fiscal note summary does not contain the legal content required for Missourians to know the enormous financial impact this measure will have on the State of Missouri and its state and local governmental operations. If added to the Missouri Constitution, the measure would create a constitutional right abortion in

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Missouri, overturning dozens of existing state laws. The actual potential fiscal impact likely is upward of $12 billion—and potentially much higher based upon a study and report noted in conjunction with the Greene County submission discussed below. That impact is reflected in submissions from organizations and individuals who provided information to your office, yet it was not transposed into your fiscal note summary. In addition, because the impact to the State of Missouri is likely to be so drastic but is not reflected in the submissions you received from state and local entities, the fiscal note on which your summary relied is legally deficient.

A. The fiscal note is legally deficient.

i. The fiscal note contains inadequate and divergent submissions from local governmental entities.

This ballot measure will affect the present and future population of Missouri. Yet while Missouri has 114 counties and one independent city, in addition to over 1,000 other cities and villages, your fiscal note requested submissions from just 12 counties and 14 cities. Only three counties and two cities responded. That is a statistically insignificant sample to be representative of the true fiscal impact.

One of those entities, Greene County, understood that the measure would have the obvious effect of reducing the population of their citizens. Greene County estimated that 135 future citizens would be lost in that county annually due to legalizing abortion in Missouri. Greene County's estimates were supported by fertility rates and the number of abortions in 2020 recorded by the Missouri Department of Health and Senior Services. Undoubtedly, this ballot measure will result in population loss. Greene County was the only entity to recognize what is facially apparent from this measure. It estimated nearly $51,000 in lost revenue *annually* to that county based on the reduced population base. Moreover, this annual dollar amount will necessarily increase cumulatively in successive years.

Your office recognized that this was a reasonable assumption, as your fiscal note summary reflects the financial impact to Greene County. Your office, however, did not apply that same reasonable assumption when assessing the submissions from the few other entities who responded to your request for a fiscal note submission, nor did your office apply this obvious assumption to highly populous areas in the state.

–Greene County's assumption is supported by a nationwide study published by the United States Senate Joint Economic Committee. See https://www.jec.senate.gov/public/index.cfm/republicans/2022/6/the-economic-cost-of-abortion. It reports an estimate economic cost of abortion in 2019 alone, due to nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of

AMERICAN OVERSIGHT

the GDP. Based on this study and 4,660 abortions in Missouri in 2019,[1] the total economic loss to Missouri from these measures could be as high as $51 billion. As Greene County appropriately presents, the substantial economic fiscal reality of abortion relating to unborn lives cannot be denied or omitted from a fiscal note to inform voters of the consequences.

In *Missouri Mun. League v. Carnahan*, 303 S.W.3d 573 (Mo. App. W.D. 2010) the Court of Appeals reviewed the State Auditor's Office's process in preparing a fiscal note and fiscal note summary for a ballot measure. The Court noted that it is your office's practice to "evaluate the responses and to obtain clarification from the entity if the information was unclear. If [the office] found a response to be unreasonable, that affected how much weight was given to the statement in preparing the summary." *Id.* at 582.

The fiscal note and fiscal note summary submitted to the Attorney General's Office does not comply with this process. Greene County's submission is the only reasonable submission by the few entities that responded to your request for submission. The responses from the other counties and cities were unreasonable as they employed an entirely different—and patently incorrect—methodology. It is unreasonable for those entities to conclude that the measure will have no estimated fiscal impact on their operations. Greene County's methodology, or a similar methodology that recognizes the assumptions Greene County recognizes, should be applied to the population base in all Missouri counties and take into account the number of reported abortions in Missouri from the Department of Health and Senior Services, a source referenced in Greene County's submission to your office.

ii. The fiscal note contains inadequate submissions concerning the impact to state governmental operations.

The fiscal note indicates that responses were received from the Department of Revenue and the Department of Social Services, among others. Neither of those entities estimated a fiscal impact despite the plain impact this ballot measure will have to their agencies.

As Greene County recognized, aborting unborn Missourians will have a deleterious impact on the future tax base. The Department of Revenue did not employ a similar methodology for the state tax base. As one submission to your office noted, there were about 2,000 abortions reported in Missouri to the Department of Health and Senior Services between 2020-2021.

The Department of Revenue's submission should be rejected under *Carnahan*, which should affect "how much weight [should be] given to the statement in preparing the summary," *Missouri Mun. League*, 303 S.W.3d at 582. In the alternative, another

[1] https://health.mo.gov/data/vitalstatistics/mvs19/Table12ab.pdf.

AMERICAN OVERSIGHT

submission should be requested from the Department of Revenue that more accurately estimates the fiscal impact to its operations.

The Department of Social Services similarly estimated that the measure will have no impact on their department. This submission also fails under *Carnahan*.

Your office received submissions that correctly indicate that this measure will affect the Department of Social Services. One submission noted that under federal law, "state are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program." As that submission noted, in 2019, Missouri's Medicaid program received more than $7.2 billion in federal funds.

Another submission noted the amendment might result in a loss of federal Medicaid revenues by an unknown amount, up to $12.5 billion annually—the amount that Missouri is estimated to receive in fiscal year 2024 in federal Medicaid dollars. Other states have recently lost Medicaid revenue because of changes in abortion policy. As two submissions to your office noted, the State of California did not receive $200 million in federal Medicaid matching dollars due to its unlawful abortion insurance mandate.

Those numbers are reflected nowhere in the submission from the Department of Social Services. The submission should thus be afforded no weight, or another submission should be requested from the Department of Social Services that more accurately estimates the fiscal impact to its operations.

B. The fiscal note summary is legally deficient

Under § 116.175.3, a fiscal note summary must contain "language neither argumentative nor likely to create prejudice either for or against the proposed measure." It is subject to challenge in the courts if the language is "insufficient or unfair." § 116.190.

The fiscal note summary likely does not comply with § 116.175 for at least two primary reasons. First, the fiscal note summary conveys the misleading message that it is an accurate representation of the true cost to local and state governmental operations. The only numerical figure mentioned in the fiscal note summary is $51,000—a sliver of the maximum (or even likely) potential financial impact to local and state governmental operations. The average, reasonable voter reading this summary will not know the small sample of entities your office solicited for submissions or the small response rate. The fiscal note summary hides an elephant

AMERICAN OVERSIGHT

in a mouse hole. Upon revision, if your office does not receive a greater response rate or solicit new submissions, the revised fiscal note should explain that the true, statewide cost of this measure is nowhere close to the amount reported by just one Missouri county.

Second, the fiscal note summary is legally deficient for failing to adequately summarize the submissions your office received. In *Protect Consumers' Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665 (Mo. App. W.D. 2015), the Court of Appeals held that "[t]he Auditor must include submissions in the fiscal note regarding the *potential* cost or savings to state or local government entities as a result of the initiative." *Id.* at 674. The fiscal note summary merely states that "opponents estimate a potentially significant loss to state revenue." Your office received submissions indicating that the "potentially significant loss" could be nearly $12.5 billion dollars in Medicaid losses alone, and potentially much higher.

The fiscal note summary should reflect that number. To the extent that the fiscal note summary must have the "responses submitted [] listed verbatim in the fiscal note with only minor editing," *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc 2012), the fiscal note summary does not meet that standard by failing to note the potential $12.5 billion impact to the State from the potential loss of Medicaid dollars or the much higher impact from the decrease in population.

Voters reading the fiscal note summary are likely to be misled into thinking that this ballot measure will have little fiscal impact on state and local governmental entities. If it ultimately appears as part of the official ballot title, the fiscal note summary is likely to be met with a well-founded legal challenge to its fairness and sufficiency.

For these reasons, I conclude that the fiscal note and fiscal note summary do not satisfy the requirements of § 116.175 and therefore I am returning them to you for revision.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-215

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 206-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 206-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-077 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-077 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-077 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-077 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-077 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-077 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-077 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-077 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-077. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-077 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-077 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-077.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-077 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-077)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-077 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-077IP proposes a constitutional amendment to Article I of the Missouri Constitution. The amendment would create "The Right to Reproductive Freedom Initiative," which entails the "right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions."

Section 36.3 states "the right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling government interest achieved by the least restrictive means. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making."

AMERICAN OVERSIGHT

The amendment would also provide protections from penalization, prosecution, or adverse action based on pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Protections would also be in place for healthcare providers who assist a consenting person in exercising their right to reproductive freedom.

The amendment limits the state government's authority to restrict reproductive health, including abortion care. The impact on the Department of Health and Senior Services will largely depend on the court's interpretation of the constitutional language and the extent the court determines that licensing and regulation of abortion facilities is overly restrictive to reproductive freedom. The court's interpretation has the potential to:

- Void all or most of the current statutes outlined in Chapter 188 that regulate abortion;
- Remove the Department's authority to license abortion facilities;
- Remove the Department's authority to regulate abortion facilities;
- Negate promulgated rules surrounding abortion; and/or
- Expand the practice of abortion and number of abortion facilities in Missouri; however, by how far is unpredictable.

The General Assembly will have the ability to enact laws that regulate abortion; however, there will be restrictions based on the amendment, as well as the court's interpretation of the restrictive nature of licensure and regulation.

Due to the various factors stated above, the proposed constitutional amendment has an unknown impact on their department.

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I version 1.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

AMERICAN OVERSIGHT

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-077 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission on this initiative petition.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered

AMERICAN OVERSIGHT

fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-077 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I version 1.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

AMERICAN OVERSIGHT

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-077 proposing to amend Article I version 1. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion.**

  - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
  - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

    - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
    - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
    - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
    - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
    - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

      - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

---

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 207-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 207-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-078 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-078 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-078 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-078 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-078 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-078 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-078 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-078 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-078. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-078 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-078 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-078.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-078 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-078)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-078 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-078 is identical to 24-077 with the following exception:

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Comments:

The fiscal impact for 24-078 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-078 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact is anticipated to their office.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-078 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-078 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 208-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 208-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-079 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-079 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-079 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

---

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-079 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-079 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-079 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-079 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-079 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-079. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-079 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-079 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-079.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-079 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-079)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-079 is identical to 24-077 with the following exception:

Removes "other than as required by federal law" from Section 36.6.

Comments:

The fiscal impact for 24-079 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-079 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-079 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I version 3.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-079 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 209-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 209-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-080 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-080 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-080 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-080 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-080 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-080 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-080 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-080 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-080. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-080 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-080 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-080.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-080 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-080)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-080 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-080 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Comments:

The fiscal impact for 24-080 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-080 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-080 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-080 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 210-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 210-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-081 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-081 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-081 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-081 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-081 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-081 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-081 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-081 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-081. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-081 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-081 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-081.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-081 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

P.O. Box 869 • Jefferson City, MO 65102 • (573) 751-4213 • FAX (573) 751-7984

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-081)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-081 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-081 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall

AMERICAN OVERSIGHT

permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Comments:

The fiscal impact for 24-081 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-081 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-081 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-081 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion.**

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345.**
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 211-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 211-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-082 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-082 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-082 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

---

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-082 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-082 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-082 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-082 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-082 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-082. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-082 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-082 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-082.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-082 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-082)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-082 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-082 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-082 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-082 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-082 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-082 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

---

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 212-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 212-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-083 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-083 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-083 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

---

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-083 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-083 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-083 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-083 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-083 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-083. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-083 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-083 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-083.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-083 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-083)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-083 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-083 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.:

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-083 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-083 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate i**ndicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-083 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-083 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.
    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:
        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:
            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia, ,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 213-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 213-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-084 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-084 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-084 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-084 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-084 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-084 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-084 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-084 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-084. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-084 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-084 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-084.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-084 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-084)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-084 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-084 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's las menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077).

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-084 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-084 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-084 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-084 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have has no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.
    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:
        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:
            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 214-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 214-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-085 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-085 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-085 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

---

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-085 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-085 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-085 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-085 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-085 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-085. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-085 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-085 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-085.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-085 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-085)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-085 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-085 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Adds definition for Fetal Viability in Section 36.10(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-085 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-085 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-085 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-085 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion.**

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income.** The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 215-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 215-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-086 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-086 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-086 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

---

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-086 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-086 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-086 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-086 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-086 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-086. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

---

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-086 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-086 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-086.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-086 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-086)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-086 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-086 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes Section 36.6 "Nothing in this Section requires government funding of abortion other than as required by federal law"

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.8(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-086 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-086 has no fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-086 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-086 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101

(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
APR 21 2023
MISSOURI
ATTORNEY GENERAL

April 21, 2023

The Honorable Andrew Bailey
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Re: Attorney General Opinion No. 216-2023

Dear Attorney General Bailey,

The State Auditor's Office is in receipt of Opinion Letter No. 216-2023 in which you allege the fiscal note and fiscal note summary for IP 2024-087 did not satisfy the requirements of section 116.175, RSMo, and were therefore returned for revision.

> *The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.*

Section 116.175.3, RSMo. The fiscal note and fiscal note summary for IP 2024-087 contain estimated costs to state and local governmental entities and the fiscal note summary further states potential significant costs are anticipated by opponents. The fiscal note summary contains 33 words (excluding one article) and summarizes the fiscal note in language neither argumentative nor likely to create prejudice either for or against the ballot initiative. The fiscal note therefore does contain language that advises Missourians of the estimated financial impact IP 2024-087 would have on the State of Missouri and its state and local governmental operations, and it complies with all statutory requirements contained in chapter 116.

In preparing the fiscal note and fiscal note summary, the State Auditor's Office followed the procedure which has remained substantially the same and been used in drafting all fiscal notes and fiscal note summaries for at least the last decade, during which Auditors of both major political

AMERICAN OVERSIGHT

parties have held office. This process has been upheld by the courts repeatedly, as you are aware from reviewing the various decisions cited in your opinion, and includes ensuring representation from an appropriate cross-section of entities that might be affected by the proposal. To achieve this representation, the State Auditor's Office sent copies of the proposed ballot initiative to various state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative. While the State Auditor's Office is not required to solicit responses from any entities at all, we inquired of a range of state agencies and other political subdivisions, a list of which has been curated over many years based on a variety of considerations.[1]

Specifically, the State Auditor's Office requested submissions from the Attorney General's Office[2], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District,

[1] This list also includes entities that have specifically asked to be added to the comprehensive list of entities that receive from the State Auditor's Office a copy of every ballot initiative for review for impact. It also excludes any entity that has specifically asked to be excluded from this list.

[2] On March 16, 2023, officials from the Attorney General's Office provided a fiscal response that indicated they expect to the extent the enactment of IP 2024-087 would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the State Auditor's Office also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public.

The entity tasked with managing the state's Medicaid program, the Department of Social Services (DSS), as well as the Department of Mental Health (DMH), and the Department of Health and Senior Services (DHSS) (the other agencies with exposure to the Medicaid program) indicated they do not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS, as a result of IP 2024-087 and no other state agency, nor the Attorney General's Office, provided a response that indicated IP 2024-087 would jeopardize the state's federal Medicaid funding. Your opinion states that you disagree with the fiscal response of DSS and the Department of Revenue[3] (DOR), stating their submissions are missing the inclusion of the potential loss of Medicaid funding and tax revenue respectively, and assert another submission should be requested.

> Although the auditor *may* conduct a follow-up inquiry with an entity whose submission raises additional questions or appears incomplete, *Brown,* 370 S.W.3d at 649, there is no authority *requiring* that the auditor send any entity the submission of another entity for review nor *requiring* any entity to respond to the auditor's request for submissions at all, much less to comply with a request to review the submission of another entity and comment on such submission.

Sinquefield v. Jones, 435 S.W.3d 674, 681 (Mo. App. W.D. 2014) (emphasis in original). The responses received from DSS and DOR were clear and did not raise additional questions or appear incomplete. Even so, since receiving your opinion, I have spoken with the Director of the Department of Social Services and the Director of MO Healthnet, as well as the Director of the Department of Revenue regarding IP 2024-087 and have been informed that after consideration of the contents of your opinion relevant to their agencies, neither DSS nor DOR will be modifying their response.

The State Auditor's Office examines submissions to determine whether they appear complete, are relevant, have an identifiable source and are reasonable. *Protect Consumers' Access*

[3] DOR indicated IP 2024-087 would have no fiscal impact on the department.

AMERICAN OVERSIGHT

to Quality Home Care Coalition, LLC v. Kander, 488 S.W.3d 665, 674 (Mo. App. W.D. 2015) ("The role of the Auditor is not to judge the merits of a fiscal impact submission, but only to examine to determine whether the submission is complete, is relevant, has an identifiable source, and is reasonable."). "The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues." *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012). Based on my experience in state government as a legislator, State Treasurer, and State Auditor and my overall knowledge and understanding of the state budget and Medicaid funding, I see no argument to be made that the state's $12.5 billion in annual Medicaid funding is at risk. Additionally, no legal opinion presented to me, including yours, provides analysis supporting the claim that Missouri's Medicaid funding could be lost due to mandated violations of federal law, and stating such in the fiscal note summary would be inaccurate. While I personally find the content of the IP extremely morally objectionable, that is not a sufficient reason for me to claim the state could lose $12.5 billion of federal funds annually. Even setting aside the lack of evidence or any legal analysis explaining how the IP would place Missouri in violation of the Hyde[4] amendment, our research has failed to identify any state that has ever been subjected to a penalty that amounted to the withholding of 100% of annual federal Medicaid funding. To the extent the U.S. Department of Health and Human Services (HHS) has penalized a state for a violation of what the Hyde or Weldon[5] Amendments require, the penalty imposed has been less than 5% (typically 1-2%) of that state's total annual Medicaid funding. The citation to the $200 million penalty imposed upon California is unfortunately not comparable to the provisions included in IP 2024-087. The State of California was penalized by HHS because California illegally imposed universal abortion coverage mandates on all health care plans in the state-a mandate that is clearly in violation of the Weldon

[4] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[5] The Weldon Amendment stands for the proposition that mandatory abortion coverage cannot be foisted upon health care providers and bars federal funding by HHS to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

Amendment, and a mandate that if included in the IP would have almost certainly resulted in a different response from DSS and a different fiscal note summary.

While there is a lack of evidence the State of Missouri would lose federal funding, opponents cited a multitude of other consequences of IP 2024-087 that could result in potential significant losses in revenue, which is acknowledged in the fiscal note summary. Specifically, the fiscal note summary states: "Opponents estimate a potentially significant loss to state revenues."

The State Auditor's Office included the assessment of Greene County based on that county's estimation that it would immediately suffer a $51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. We were provided with conflicting submissions from all other counties that responded, each of which reported no fiscal impact, yet your opinion concludes the fiscal note summary should have disregarded the other responses that were received from local governments and applied the Greene County methodology to all other political subdivisions in the state. The statutory timeline for the State Auditor's Office to review submissions and draft fiscal notes and fiscal note summaries is not sufficient to independently analyze every economic theory contained in submissions received, much less extrapolate the assumptions of a single entity across the thousands of political subdivisions in the state, all of which have different levels of taxation, fertility rates, and numbers of citizens who might seek an abortion. It would not be appropriate to apply Greene County's economic theory to other governmental entities given that no other governmental entity supplied a similar analysis. *Brown*, 370 S.W.3d at 650 ("It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note."). For completeness, I included the fiscal impact reported by Greene County, and indicated that the amount of their response was the lowest indicated cost to local governments. Specifically, the fiscal note summary states: "Local governmental entities estimate costs of *at least* $51,000 annually in reduced tax revenues".

The State Auditor's Office is not required to parrot the fiscal responses provided by proponents or opponents in the face of knowledge that such responses are unreasonable or otherwise include questionable methodology or an unidentifiable source for its fiscal assessment, nor should it be. More succinctly stated, the Auditor is *not* required to include "responses

AMERICAN OVERSIGHT

submitted [] listed verbatim in the fiscal note with only minor editing" or in the fiscal note summary. In determining that the Auditor's actions throughout the process of preparing fiscal notes and fiscal note summaries fall under the plain meaning of the terms "investigate" and "investigation", the *Brown* court summarized the testimony of a member of the staff of then Auditor Thomas Schweich.

> The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative. Hence, the auditor's actions throughout the process of preparing the fiscal notes and fiscal note summaries fall under the plain meaning of "investigate" and "investigation."

Your opinion mischaracterizes this summarization of the testimony of a State Auditor's Office employee as a directive of the court. The court very clearly did not hold or in any fashion create a standard that required the Auditor to include responses verbatim (with minor editing) in the fiscal note or in the fiscal note summary. *Brown*, 370 S.W.3d at 649. "All of the details of a fiscal note need not be set out in a summary consisting of a mere fifty words." *Missouri Muni League v. Carnahan,* 303 S.W.3d 573, 583 (Mo. App. W.D. 2010). If that requirement existed, or it were the practice of the State Auditor's Office to blindly include all submissions, regardless of content, in the fiscal note summary, the office would be forced to include any submission regardless of how preposterous it was or how likely it was to create prejudice for or against the proposed measure, something I'm sure we would both find problematic.

In 1997, the legislature definitively delegated to the State Auditor, not the Attorney General, the duty to prepare the fiscal notes and fiscal note summaries.

> *Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, the* ***auditor*** *shall assess the fiscal impact of the proposed measure. The* ***state auditor*** *may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the* ***state auditor*** *a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the* ***state auditor*** *within ten days of his or her receipt of the proposed measure from the secretary of state.*

AMERICAN OVERSIGHT

Section 116.175.3, RSMo (emphasis added). The State Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the State Auditor that has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, §13; see also *Brown,* 370 S.W.3d at 652 (holding section 116.175, RSMo, was a constitutional delegation of authority to the State Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The State Auditor's Office availed itself of its option set forth in chapter 116 to gather responses from various state and local government entities, as well as proponents and opponents, to determine the estimated costs or savings, if any, IP 2024-087 would have on their entity. The office then recorded their responses in the fiscal note and determined from their responses the estimated costs or savings, if any, of the proposed ballot measure.

My personal pro-life stance and history of advancing pro-life legislation, including eliminating taxpayer funding for abortion providers during my time as the budget chairman in the House of Representatives, is very public and I have consistently been endorsed by pro-life organizations based on my legislative record and recorded positions. As much as I would prefer to be able to say this IP would result in a loss to the state of Missouri of $12.5 billion in federal funds, it wouldn't. To submit a fiscal note summary that I know contains inaccurate information would violate my duty as State Auditor to produce an accurate fiscal note summary. Because the long-established process for producing fiscal notes and fiscal note summaries was followed and no new information has been presented that warrants inclusion in the fiscal note or fiscal note summary, I will not revise them.

Pursuant to section 116.175.2, RSMo, I have enclosed the fiscal note and fiscal note summary for IP 2024-087.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
Missouri State Auditor

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 21, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-087 on March 9, 2023. Pursuant to §116.175, RSMo, we forwarded the following fiscal note summary for your review and approval as to legal content and form. On April 10, 2023, you returned the fiscal note and fiscal note summary to our office for revision. Our office declines to revise the fiscal note and fiscal note summary. Accordingly, we are resubmitting the unaltered fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the unaltered fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-087)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-087 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-087 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077)

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the .fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-087 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-087 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-087 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-087 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

  - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
  - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

    - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
    - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
    - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
    - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
    - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

      - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

---

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

May 1, 2023

The Honorable Scott Fitzpatrick
Missouri State Auditor
State Capitol, Room 229
Jefferson City, MO 65101

Dear Auditor Fitzpatrick:

This office received your letters of April 21, 2023 resubmitting fiscal notes and fiscal note summaries prepared under § 116.175, RSMo, for initiative petitions submitted by Anna Fitz-James, 2024-077 through 2024-087. The fiscal note summary that you submitted for all eleven initiative petitions reads in its entirety as follows:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

On April 10, 2023, this office previously rejected these fiscal notes and fiscal note summaries that you submitted for this measure, which we "returned to the auditor for revision." § 116.175.5, RSMo. Our previous letter explained the reasons for our rejection. Your resubmitted fiscal notes and fiscal note summaries have not changed. Our office thus concludes that we have fulfilled our response obligations under § 116.175, RSMo for initiative petitions 2024-077 through 2024-087.

Very truly yours,

ANDREW BAILEY
Attorney General

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 234-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-077. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
> - prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Supreme Court Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-235

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 1 (2024-077)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 1. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
- prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 2 (2024-078)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 2. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
- prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 3 (2024-079)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 3. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
- prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 4 (2024-080)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 4. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

April 13, 2023

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 5 (2024-081)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 5. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

April 13, 2023

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 6 (2024-082)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 6. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 7 (2024-083)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 7. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

April 13, 2023

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 8 (2024-084)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 8. The language for the proposed statement reads as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

April 13, 2023

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 9 (2024-085)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 9. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

April 13, 2023

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 10 (2024-086)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 10. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

RECEIVED
APR 13 2023
MISSOURI
ATTORNEY GENERAL

April 13, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Proposed summary statement for a constitutional amendment to Article I, version 11 (2024-087)

Dear Attorney General Bailey:

Pursuant to Section 116.334, RSMo, the Secretary of State is submitting its proposed summary statement for the petition submitted by Anna Fitz-James on March 8, 2023, relating to amending Article I, version 11. The language for the proposed statement reads as follows:

Do you want to amend the Missouri Constitution to:
- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Please review the proposed language to determine that it is "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure," as required by the statute referenced above. Once your office has reviewed the proposed language, please notify this office within the ten-day period provided by statute.

If we can be of any assistance during the review process, do not hesitate to contact us. Thank you in advance for your review of the proposed language.

Sincerely,

John R. Ashcroft
Secretary of State

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 235-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-078. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
> - prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-236

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 236-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-079. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
> - prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-237

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 237-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-080. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-238

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 238-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-081. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-239

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 239-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-082. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-240

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 240-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-083. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-241

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 241-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-084. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after 24 weeks, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-242

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 242-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-085. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-243

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 243-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-086. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

OP-2023-244

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 24, 2023

OPINION LETTER NO. 244-2023

The Honorable John R. Ashcroft
Missouri Secretary of State
James C. Kirkpatrick State Information Center
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

This opinion letter responds to your request dated April 13, 2023, for our review under § 116.334, RSMo of a proposed summary statement prepared for the petition submitted by Anna Fitz-James, 2024-087. The proposed summary statement is as follows:

> Do you want to amend the Missouri Constitution to:
> - allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
> - nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
> - allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
> - require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Pursuant to § 116.334, RSMo, we approve the legal content and form of the proposed statement. The summary is a concise statement, not exceeding one hundred words. It is in the form of a question using language that is neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. Because our review of the statement is mandated by statute, no action that we take with respect to such § 116.334, RSMo review of the above

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

proposed statement should be construed as an endorsement of the petition, nor as the expression of any view regarding the objectives of its proponents.

Finally, please note that our office has independently reviewed for legal content and form of the proposed fiscal note and fiscal note summary in accordance with § 116.175 RSMo. However, no such fiscal note summary in connection with this proposed measure has yet been approved by this Office.

Very truly yours,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 174-2023 - 184-2023
Date:	Monday, March 20, 2023 5:23:04 PM
Attachments:	174-2023.pdf 175-2023.pdf 176-2023.pdf 177-2023.pdf 178-2023.pdf 179-2023.pdf 180-2023.pdf 181-2023.pdf 182-2023.pdf 183-2023.pdf 184-2023.pdf

---

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

174-2023
175-2023
176-2023
177-2023
178-2023
179-2023
180-2023
181-2023
182-2023
183-2023
184-2023

The originals will be hand delivered today.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 207-2023
Date:	Monday, April 10, 2023 5:15:41 PM
Attachments:	207-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

207-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 208-2023
Date:	Monday, April 10, 2023 5:16:13 PM
Attachments:	208-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

208-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 209-2023
Date:	Monday, April 10, 2023 5:16:47 PM
Attachments:	209-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

209-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 210-2023
Date:	Monday, April 10, 2023 5:17:55 PM
Attachments:	210-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

210-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 211-2023
Date:	Monday, April 10, 2023 5:18:32 PM
Attachments:	211-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

211-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 212-2023
Date:	Monday, April 10, 2023 5:19:12 PM
Attachments:	212-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

212-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 213-2023
Date:	Monday, April 10, 2023 5:19:56 PM
Attachments:	213-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

213-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 214-2023
Date:	Monday, April 10, 2023 5:20:34 PM
Attachments:	214-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

214-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 215-2023
Date:	Monday, April 10, 2023 5:21:18 PM
Attachments:	215-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

215-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion No. 216-2023
Date:	Monday, April 10, 2023 5:21:52 PM
Attachments:	216-2023.pdf

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

216-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 234-2023
Date:	Monday, April 24, 2023 5:22:02 PM
Attachments:	234-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

234-2023

The originals will be hand delivered today.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 236-2023
Date:	Monday, April 24, 2023 5:23:18 PM
Attachments:	236-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

236-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 237-2023
Date:	Monday, April 24, 2023 5:23:55 PM
Attachments:	237-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

237-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 238-2023
Date:	Monday, April 24, 2023 5:24:25 PM
Attachments:	238-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

238-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 239-2023
Date:	Monday, April 24, 2023 5:24:59 PM
Attachments:	239-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

239-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 240-2023
Date:	Monday, April 24, 2023 5:25:29 PM
Attachments:	240-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

240-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 241-2023
Date:	Monday, April 24, 2023 5:26:04 PM
Attachments:	241-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

241-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 242-2023
Date:	Monday, April 24, 2023 5:26:36 PM
Attachments:	242-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

242-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 243-2023
Date:	Monday, April 24, 2023 5:28:02 PM
Attachments:	243-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

243-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 244-2023
Date:	Monday, April 24, 2023 5:28:58 PM
Attachments:	244-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

244-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion No. 253-2023
Date:	Monday, April 24, 2023 5:22:42 PM
Attachments:	235-2023.pdf

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

235-2023

The original will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion Nos. 206-2023 through 210-2023
Date:	Monday, April 10, 2023 5:13:53 PM
Attachments:	210-2023.pdf 209-2023.pdf 208-2023.pdf 207-2023.pdf 206-2023.pdf

---

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

206-2023
207-2023
208-2023
209-2023
210-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"
Subject:	Attorney General Opinion Nos. 206-2023 through 216-2023
Date:	Monday, April 10, 2023 5:10:57 PM
Attachments:	216-2023.pdf 215-2023.pdf 214-2023.pdf 213-2023.pdf 212-2023.pdf 211-2023.pdf 210-2023.pdf 209-2023.pdf 208-2023.pdf 207-2023.pdf 206-2023.pdf

---

Please find attached the following Attorney General Opinions issued to Auditor Scott Fitzpatrick today.

206-2023
207-2023
208-2023
209-2023
210-2023
211-2023
212-2023
213-2023
214-2023
215-2023
216-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"deedee.straub@sos.mo.gov"; "scott.pauley@sos.mo.gov"
Cc:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Subject:	Attorney General Opinion Nos. 234-2023 through 244-2023
Date:	Monday, April 24, 2023 5:21:18 PM
Attachments:	234-2023.pdf 235-2023.pdf 236-2023.pdf 237-2023.pdf 238-2023.pdf 239-2023.pdf 240-2023.pdf 241-2023.pdf 242-2023.pdf 243-2023.pdf 244-2023.pdf

---

Please find attached the following Attorney General Opinions issued to Secretary of State Ashcroft today.

234-2023
235-2023
236-2023
237-2023
238-2023
239-2023
240-2023
241-2023
242-2023
243-2023
244-2023

The originals will be hand delivered.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

From:	Haines, Diana
To:	"sheri.hoffman@auditor.mo.gov"; "mark.henley@auditor.mo.gov"; "fiscalnote@auditor.mo.gov"; "Susan.beeler@auditor.mo.gov"; "ted.fugitt@auditor.mo.gov"; "jon.halwes@auditor.mo.gov"
Cc:	"scott.pauley@sos.mo.gov"; "deedee.straub@sos.mo.gov"; "leslie.korte@auditor.mo.gov"
Subject:	Correspondence from the Attorney General
Date:	Monday, May 1, 2023 5:10:20 PM
Attachments:	2023.05.01 Letter to the Auditor.pdf

Please see attached correspondence.

Thank you,

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

AMERICAN OVERSIGHT

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 49, 236 & 164

AN ACT

To repeal sections 208.152, 217.230, and 221.120, RSMo, and to enact in lieu thereof four new sections relating to gender transition procedures.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 208.152, 217.230, and 221.120, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 191.1720, 208.152, 217.230, and 221.120, to read as follows:

191.1720. 1. This section shall be known and may be cited as the "Missouri Save Adolescents from Experimentation (SAFE) Act".

2. For purposes of this section, the following terms mean:

(1) "Biological sex", the biological indication of male or female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender;

(2) "Cross-sex hormones", testosterone, estrogen, or other androgens given to an individual in amounts that are greater or more potent than would normally occur naturally in a healthy individual of the same age and sex;

(3) "Gender", the psychological, behavioral, social, and cultural aspects of being male or female;

AMERICAN OVERSIGHT

(4) "Gender transition", the process in which an individual transitions from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, and may involve social, legal, or physical changes;

(5) "Gender transition surgery", a surgical procedure performed for the purpose of assisting an individual with a gender transition, including, but not limited to:

(a) Surgical procedures that sterilize, including, but not limited to, castration, vasectomy, hysterectomy, oophorectomy, orchiectomy, or penectomy;

(b) Surgical procedures that artificially construct tissue with the appearance of genitalia that differs from the individual's biological sex, including, but not limited to, metoidioplasty, phalloplasty, or vaginoplasty; or

(c) Augmentation mammoplasty or subcutaneous mastectomy;

(6) "Health care provider", an individual who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession;

(7) "Puberty-blocking drugs", gonadotropin-releasing hormone analogues or other synthetic drugs used to stop luteinizing hormone secretion and follicle stimulating hormone secretion, synthetic antiandrogen drugs to block the androgen receptor, or any other drug used to delay or suppress pubertal development in children for the purpose of assisting an individual with a gender transition.

3. A health care provider shall not knowingly perform a gender transition surgery on any individual under eighteen years of age.

AMERICAN OVERSIGHT

4. (1) A health care provider shall not knowingly prescribe or administer cross-sex hormones or puberty-blocking drugs for the purpose of a gender transition for any individual under eighteen years of age.

(2) The provisions of this subsection shall not apply to the prescription or administration of cross-sex hormones or puberty-blocking drugs for any individual under eighteen years of age who was prescribed or administered such hormones or drugs prior to August 28, 2023, for the purpose of assisting the individual with a gender transition.

(3) The provisions of this subsection shall expire on August 28, 2027.

5. The performance of a gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking drugs to an individual under eighteen years of age in violation of this section shall be considered unprofessional conduct and any health care provider doing so shall have his or her license to practice revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state.

6. (1) The prescription or administration of cross-sex hormones or puberty-blocking drugs to an individual under eighteen years of age for the purpose of a gender transition shall be considered grounds for a cause of action against the health care provider. The provisions of chapter 538 shall not apply to any action brought under this subsection.

(2) An action brought pursuant to this subsection shall be brought within fifteen years of the individual injured attaining the age of twenty-one or of the date the treatment of the injury at issue in the action by the defendant has ceased, whichever is later.

AMERICAN OVERSIGHT

(3) An individual bringing an action under this subsection shall be entitled to a rebuttable presumption that the individual was harmed if the individual is infertile following the prescription or administration of cross-sex hormones or puberty-blocking drugs and that the harm was a direct result of the hormones or drugs prescribed or administered by the health care provider. Such presumption may be rebutted only by clear and convincing evidence.

(4) In any action brought pursuant to this subsection, a plaintiff may recover economic and noneconomic damages and punitive damages, without limitation to the amount and no less than five hundred thousand dollars in the aggregate. The judgment against a defendant in an action brought pursuant to this subsection shall be in an amount of three times the amount of any economic and noneconomic damages or punitive damages assessed. Any award of damages in an action brought pursuant to this subsection to a prevailing plaintiff shall include attorney's fees and court costs.

(5) An action brought pursuant to this subsection may be brought in any circuit court of this state.

(6) No health care provider shall require a waiver of the right to bring an action pursuant to this subsection as a condition of services. The right to bring an action by or through an individual under the age of eighteen shall not be waived by a parent or legal guardian.

(7) A plaintiff to an action brought under this subsection may enter into a voluntary agreement of settlement or compromise of the action, but no agreement shall be valid until approved by the court. No agreement allowed by the court shall include a provision regarding the nondisclosure or confidentiality of the terms of such

AMERICAN OVERSIGHT

agreement unless such provision was specifically requested and agreed to by the plaintiff.

(8) If requested by the plaintiff, any pleadings, attachments, or exhibits filed with the court in any action brought pursuant to this subsection, as well as any judgments issued by the court in such actions, shall not include the personal identifying information of the plaintiff. Such information shall be provided in a confidential information filing sheet contemporaneously filed with the court or entered by the court, which shall not be subject to public inspection or availability.

7. The provisions of this section shall not apply to any speech protected by the First Amendment of the United States Constitution.

8. The provisions of this section shall not apply to the following:

(1) Services to individuals born with a medically-verifiable disorder of sex development, including, but not limited to, an individual with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46,XX chromosomes with virilization, 46,XY chromosomes with undervirilization, or having both ovarian and testicular tissue;

(2) Services provided when a physician has otherwise diagnosed an individual with a disorder of sex development and determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(3) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking

AMERICAN OVERSIGHT

drugs regardless of whether the surgery was performed or the hormones or drugs were prescribed or administered in accordance with state and federal law; or

(4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of a major bodily function unless surgery is performed.

208.152. 1. MO HealthNet payments shall be made on behalf of those eligible needy persons as described in section 208.151 who are unable to provide for it in whole or in part, with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the MO HealthNet division, unless otherwise hereinafter provided, for the following:

(1) Inpatient hospital services, except to persons in an institution for mental diseases who are under the age of sixty-five years and over the age of twenty-one years; provided that the MO HealthNet division shall provide through rule and regulation an exception process for coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile professional activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay schedule; and provided further that the MO HealthNet division shall take into account through its payment system for hospital services the situation of hospitals which serve a disproportionate number of low-income patients;

(2) All outpatient hospital services, payments therefor to be in amounts which represent no more than eighty percent of the lesser of reasonable costs or

AMERICAN OVERSIGHT

customary charges for such services, determined in accordance with the principles set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. Section 301, et seq.), but the MO HealthNet division may evaluate outpatient hospital services rendered under this section and deny payment for services which are determined by the MO HealthNet division not to be medically necessary, in accordance with federal law and regulations;

(3) Laboratory and X-ray services;

(4) Nursing home services for participants, except to persons with more than five hundred thousand dollars equity in their home or except for persons in an institution for mental diseases who are under the age of sixty-five years, when residing in a hospital licensed by the department of health and senior services or a nursing home licensed by the department of health and senior services or appropriate licensing authority of other states or government-owned and -operated institutions which are determined to conform to standards equivalent to licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. Section 301, et seq.), as amended, for nursing facilities. The MO HealthNet division may recognize through its payment methodology for nursing facilities those nursing facilities which serve a high volume of MO HealthNet patients. The MO HealthNet division when determining the amount of the benefit payments to be made on behalf of persons under the age of twenty-one in a nursing facility may consider nursing facilities furnishing care to persons under the age of twenty-one as a classification separate from other nursing facilities;

(5) Nursing home costs for participants receiving benefit payments under subdivision (4) of this subsection

AMERICAN OVERSIGHT

for those days, which shall not exceed twelve per any period of six consecutive months, during which the participant is on a temporary leave of absence from the hospital or nursing home, provided that no such participant shall be allowed a temporary leave of absence unless it is specifically provided for in his plan of care. As used in this subdivision, the term "temporary leave of absence" shall include all periods of time during which a participant is away from the hospital or nursing home overnight because he is visiting a friend or relative;

(6) Physicians' services, whether furnished in the office, home, hospital, nursing home, or elsewhere;

(7) Subject to appropriation, up to twenty visits per year for services limited to examinations, diagnoses, adjustments, and manipulations and treatments of malpositioned articulations and structures of the body provided by licensed chiropractic physicians practicing within their scope of practice. Nothing in this subdivision shall be interpreted to otherwise expand MO HealthNet services;

(8) Drugs and medicines when prescribed by a licensed physician, dentist, podiatrist, or an advanced practice registered nurse; except that no payment for drugs and medicines prescribed on and after January 1, 2006, by a licensed physician, dentist, podiatrist, or an advanced practice registered nurse may be made on behalf of any person who qualifies for prescription drug coverage under the provisions of P.L. 108-173;

(9) Emergency ambulance services and, effective January 1, 1990, medically necessary transportation to scheduled, physician-prescribed nonelective treatments;

(10) Early and periodic screening and diagnosis of individuals who are under the age of twenty-one to ascertain

AMERICAN OVERSIGHT

their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Such services shall be provided in accordance with the provisions of Section 6403 of P.L. 101-239 and federal regulations promulgated thereunder;

(11) Home health care services;

(12) Family planning as defined by federal rules and regulations; provided, however, that such family planning services shall not include abortions or any abortifacient drug or device that is used for the purpose of inducing an abortion unless such abortions are certified in writing by a physician to the MO HealthNet agency that, in the physician's professional judgment, the life of the mother would be endangered if the fetus were carried to term;

(13) Inpatient psychiatric hospital services for individuals under age twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C. Section 1396d, et seq.);

(14) Outpatient surgical procedures, including presurgical diagnostic services performed in ambulatory surgical facilities which are licensed by the department of health and senior services of the state of Missouri; except, that such outpatient surgical services shall not include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended, if exclusion of such persons is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended;

(15) Personal care services which are medically oriented tasks having to do with a person's physical requirements, as opposed to housekeeping requirements, which enable a person to be treated by his or her physician on an

AMERICAN OVERSIGHT

outpatient rather than on an inpatient or residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal care services shall be rendered by an individual not a member of the participant's family who is qualified to provide such services where the services are prescribed by a physician in accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible to receive personal care services shall be those persons who would otherwise require placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable for personal care services shall not exceed for any one participant one hundred percent of the average statewide charge for care and treatment in an intermediate care facility for a comparable period of time. Such services, when delivered in a residential care facility or assisted living facility licensed under chapter 198 shall be authorized on a tier level based on the services the resident requires and the frequency of the services. A resident of such facility who qualifies for assistance under section 208.030 shall, at a minimum, if prescribed by a physician, qualify for the tier level with the fewest services. The rate paid to providers for each tier of service shall be set subject to appropriations. Subject to appropriations, each resident of such facility who qualifies for assistance under section 208.030 and meets the level of care required in this section shall, at a minimum, if prescribed by a physician, be authorized up to one hour of personal care services per day. Authorized units of personal care services shall not be reduced or tier level lowered unless an order approving such reduction or lowering is obtained from the resident's personal physician. Such authorized units of personal care services or tier level shall be transferred with such resident if he or she

AMERICAN OVERSIGHT

transfers to another such facility. Such provision shall terminate upon receipt of relevant waivers from the federal Department of Health and Human Services. If the Centers for Medicare and Medicaid Services determines that such provision does not comply with the state plan, this provision shall be null and void. The MO HealthNet division shall notify the revisor of statutes as to whether the relevant waivers are approved or a determination of noncompliance is made;

(16) Mental health services. The state plan for providing medical assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 301, as amended, shall include the following mental health services when such services are provided by community mental health facilities operated by the department of mental health or designated by the department of mental health as a community mental health facility or as an alcohol and drug abuse facility or as a child-serving agency within the comprehensive children's mental health service system established in section 630.097. The department of mental health shall establish by administrative rule the definition and criteria for designation as a community mental health facility and for designation as an alcohol and drug abuse facility. Such mental health services shall include:

(a) Outpatient mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

AMERICAN OVERSIGHT

(b) Clinic mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

(c) Rehabilitative mental health and alcohol and drug abuse services including home and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health or alcohol and drug abuse professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management. As used in this section, mental health professional and alcohol and drug abuse professional shall be defined by the department of mental health pursuant to duly promulgated rules. With respect to services established by this subdivision, the department of social services, MO HealthNet division, shall enter into an agreement with the department of mental health. Matching funds for outpatient mental health services, clinic mental health services, and rehabilitation services for mental health and alcohol and drug abuse shall be certified by the department of mental health to the MO HealthNet division. The agreement shall establish a mechanism for the joint implementation of the provisions of this subdivision. In addition, the agreement shall establish a mechanism by which rates for services may be jointly developed;

AMERICAN OVERSIGHT

(17) Such additional services as defined by the MO HealthNet division to be furnished under waivers of federal statutory requirements as provided for and authorized by the federal Social Security Act (42 U.S.C. Section 301, et seq.) subject to appropriation by the general assembly;

(18) The services of an advanced practice registered nurse with a collaborative practice agreement to the extent that such services are provided in accordance with chapters 334 and 335, and regulations promulgated thereunder;

(19) Nursing home costs for participants receiving benefit payments under subdivision (4) of this subsection to reserve a bed for the participant in the nursing home during the time that the participant is absent due to admission to a hospital for services which cannot be performed on an outpatient basis, subject to the provisions of this subdivision:

(a) The provisions of this subdivision shall apply only if:

a. The occupancy rate of the nursing home is at or above ninety-seven percent of MO HealthNet certified licensed beds, according to the most recent quarterly census provided to the department of health and senior services which was taken prior to when the participant is admitted to the hospital; and

b. The patient is admitted to a hospital for a medical condition with an anticipated stay of three days or less;

(b) The payment to be made under this subdivision shall be provided for a maximum of three days per hospital stay;

(c) For each day that nursing home costs are paid on behalf of a participant under this subdivision during any period of six consecutive months such participant shall, during the same period of six consecutive months, be

AMERICAN OVERSIGHT

ineligible for payment of nursing home costs of two otherwise available temporary leave of absence days provided under subdivision (5) of this subsection; and

(d) The provisions of this subdivision shall not apply unless the nursing home receives notice from the participant or the participant's responsible party that the participant intends to return to the nursing home following the hospital stay. If the nursing home receives such notification and all other provisions of this subsection have been satisfied, the nursing home shall provide notice to the participant or the participant's responsible party prior to release of the reserved bed;

(20) Prescribed medically necessary durable medical equipment. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards shall be used to verify medical need;

(21) Hospice care. As used in this subdivision, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social, and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO HealthNet division to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the

AMERICAN OVERSIGHT

rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

(22) Prescribed medically necessary dental services. Such services shall be subject to appropriations. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards shall be used to verify medical need;

(23) Prescribed medically necessary optometric services. Such services shall be subject to appropriations. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards shall be used to verify medical need;

(24) Blood clotting products-related services. For persons diagnosed with a bleeding disorder, as defined in section 338.400, reliant on blood clotting products, as defined in section 338.400, such services include:

(a) Home delivery of blood clotting products and ancillary infusion equipment and supplies, including the emergency deliveries of the product when medically necessary;

(b) Medically necessary ancillary infusion equipment and supplies required to administer the blood clotting products; and

(c) Assessments conducted in the participant's home by a pharmacist, nurse, or local home health care agency trained in bleeding disorders when deemed necessary by the participant's treating physician;

(25) The MO HealthNet division shall, by January 1, 2008, and annually thereafter, report the status of MO HealthNet provider reimbursement rates as compared to one

AMERICAN OVERSIGHT

hundred percent of the Medicare reimbursement rates and compared to the average dental reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve parity with Medicare reimbursement rates and for third-party payor average dental reimbursement rates. Such plan shall be subject to appropriation and the division shall include in its annual budget request to the governor the necessary funding needed to complete the four-year plan developed under this subdivision.

2. Additional benefit payments for medical assistance shall be made on behalf of those eligible needy children, pregnant women and blind persons with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the MO HealthNet division, unless otherwise hereinafter provided, for the following:

(1) Dental services;

(2) Services of podiatrists as defined in section 330.010;

(3) Optometric services as described in section 336.010;

(4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing aids, and wheelchairs;

(5) Hospice care. As used in this subdivision, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical,

AMERICAN OVERSIGHT

psychological, spiritual, social, and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO HealthNet division to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

(6) Comprehensive day rehabilitation services beginning early posttrauma as part of a coordinated system of care for individuals with disabling impairments. Rehabilitation services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan developed, implemented, and monitored through an interdisciplinary assessment designed to restore an individual to optimal level of physical, cognitive, and behavioral function. The MO HealthNet division shall establish by administrative rule the definition and criteria for designation of a comprehensive day rehabilitation service facility, benefit limitations and payment mechanism. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this subdivision shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently

AMERICAN OVERSIGHT

held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

3. The MO HealthNet division may require any participant receiving MO HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after July 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all covered services except for those services covered under subdivisions (15) and (16) of subsection 1 of this section and sections 208.631 to 208.657 to the extent and in the manner authorized by Title XIX of the federal Social Security Act (42 U.S.C. Section 1396, et seq.) and regulations thereunder. When substitution of a generic drug is permitted by the prescriber according to section 338.056, and a generic drug is substituted for a name-brand drug, the MO HealthNet division may not lower or delete the requirement to make a co-payment pursuant to regulations of Title XIX of the federal Social Security Act. A provider of goods or services described under this section must collect from all participants the additional payment that may be required by the MO HealthNet division under authority granted herein, if the division exercises that authority, to remain eligible as a provider. Any payments made by participants under this section shall be in addition to and not in lieu of payments made by the state for goods or services described herein except the participant portion of the pharmacy professional dispensing fee shall be in addition to and not in lieu of payments to pharmacists. A provider may collect the co-payment at the time a service is provided or at a later date. A provider shall not refuse to provide a service if a participant is unable to pay a required payment. If it is the routine business practice of

AMERICAN OVERSIGHT

a provider to terminate future services to an individual with an unclaimed debt, the provider may include uncollected co-payments under this practice. Providers who elect not to undertake the provision of services based on a history of bad debt shall give participants advance notice and a reasonable opportunity for payment. A provider, representative, employee, independent contractor, or agent of a pharmaceutical manufacturer shall not make co-payment for a participant. This subsection shall not apply to other qualified children, pregnant women, or blind persons. If the Centers for Medicare and Medicaid Services does not approve the MO HealthNet state plan amendment submitted by the department of social services that would allow a provider to deny future services to an individual with uncollected co-payments, the denial of services shall not be allowed. The department of social services shall inform providers regarding the acceptability of denying services as the result of unpaid co-payments.

4. The MO HealthNet division shall have the right to collect medication samples from participants in order to maintain program integrity.

5. Reimbursement for obstetrical and pediatric services under subdivision (6) of subsection 1 of this section shall be timely and sufficient to enlist enough health care providers so that care and services are available under the state plan for MO HealthNet benefits at least to the extent that such care and services are available to the general population in the geographic area, as required under subparagraph (a)(30)(A) of 42 U.S.C. Section 1396a and federal regulations promulgated thereunder.

6. Beginning July 1, 1990, reimbursement for services rendered in federally funded health centers shall be in accordance with the provisions of subsection 6402(c) and

AMERICAN OVERSIGHT

Section 6404 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations promulgated thereunder.

7. Beginning July 1, 1990, the department of social services shall provide notification and referral of children below age five, and pregnant, breast-feeding, or postpartum women who are determined to be eligible for MO HealthNet benefits under section 208.151 to the special supplemental food programs for women, infants and children administered by the department of health and senior services. Such notification and referral shall conform to the requirements of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

8. Providers of long-term care services shall be reimbursed for their costs in accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. Section 1396a, as amended, and regulations promulgated thereunder.

9. Reimbursement rates to long-term care providers with respect to a total change in ownership, at arm's length, for any facility previously licensed and certified for participation in the MO HealthNet program shall not increase payments in excess of the increase that would result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. Section 1396a (a)(13)(C).

10. The MO HealthNet division may enroll qualified residential care facilities and assisted living facilities, as defined in chapter 198, as MO HealthNet personal care providers.

11. Any income earned by individuals eligible for certified extended employment at a sheltered workshop under chapter 178 shall not be considered as income for purposes of determining eligibility under this section.

AMERICAN OVERSIGHT

12. If the Missouri Medicaid audit and compliance unit changes any interpretation or application of the requirements for reimbursement for MO HealthNet services from the interpretation or application that has been applied previously by the state in any audit of a MO HealthNet provider, the Missouri Medicaid audit and compliance unit shall notify all affected MO HealthNet providers five business days before such change shall take effect. Failure of the Missouri Medicaid audit and compliance unit to notify a provider of such change shall entitle the provider to continue to receive and retain reimbursement until such notification is provided and shall waive any liability of such provider for recoupment or other loss of any payments previously made prior to the five business days after such notice has been sent. Each provider shall provide the Missouri Medicaid audit and compliance unit a valid email address and shall agree to receive communications electronically. The notification required under this section shall be delivered in writing by the United States Postal Service or electronic mail to each provider.

13. Nothing in this section shall be construed to abrogate or limit the department's statutory requirement to promulgate rules under chapter 536.

14. Beginning July 1, 2016, and subject to appropriations, providers of behavioral, social, and psychophysiological services for the prevention, treatment, or management of physical health problems shall be reimbursed utilizing the behavior assessment and intervention reimbursement codes 96150 to 96154 or their successor codes under the Current Procedural Terminology (CPT) coding system. Providers eligible for such reimbursement shall include psychologists.

AMERICAN OVERSIGHT

15. There shall be no payments made under this section for gender transition surgeries, cross-sex hormones, or puberty-blocking drugs, as such terms are defined in section 191.1720, for the purpose of a gender transition.

217.230. The director shall arrange for necessary health care services for offenders confined in correctional centers, which shall not include any gender transition surgery, as defined in section 191.1720.

221.120. 1. If any prisoner confined in the county jail is sick and in the judgment of the jailer, requires the attention of a physician, dental care, or medicine, the jailer shall procure the necessary medicine, dental care or medical attention necessary or proper to maintain the health of the prisoner; provided, that this shall not include any gender transition surgery, as defined in section 191.1720. The costs of such medicine, dental care, or medical attention shall be paid by the prisoner through any health insurance policy as defined in subsection 3 of this section, from which the prisoner is eligible to receive benefits. If the prisoner is not eligible for such health insurance benefits then the prisoner shall be liable for the payment of such medical attention, dental care, or medicine, and the assets of such prisoner may be subject to levy and execution under court order to satisfy such expenses in accordance with the provisions of section 221.070, and any other applicable law. The county commission of the county may at times authorize payment of certain medical costs that the county commission determines to be necessary and reasonable. As used in this section, the term "medical costs" includes the actual costs of medicine, dental care or other medical attention and necessary costs associated with such medical care such as transportation, guards and inpatient care.

AMERICAN OVERSIGHT

2. The county commission may, in their discretion, employ a physician by the year, to attend such prisoners, and make such reasonable charge for his service and medicine, when required, to be taxed and collected as provided by law.

3. As used in this section, the following terms mean:

(1) "Assets", property, tangible or intangible, real or personal, belonging to or due a prisoner or a former prisoner, including income or payments to such prisoner from Social Security, workers' compensation, veterans' compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, compensation paid to the prisoner per work or services performed while a prisoner or from any other source whatsoever, including any of the following:

(a) Money or other tangible assets received by the prisoner as a result of a settlement of a claim against the state, any agency thereof, or any claim against an employee or independent contractor arising from and in the scope of the employee's or contractor's official duties on behalf of the state or any agency thereof;

(b) A money judgment received by the prisoner from the state as a result of a civil action in which the state, an agency thereof or any state employee or independent contractor where such judgment arose from a claim arising from the conduct of official duties on behalf of the state by the employee or subcontractor or for any agency of the state;

(c) A current stream of income from any source whatsoever, including a salary, wages, disability benefits, retirement benefits, pension benefits, insurance or annuity benefits, or similar payments; and

AMERICAN OVERSIGHT

(2) "Health insurance policy", any group insurance policy providing coverage on an expense-incurred basis, any group service or indemnity contract issued by a not-for-profit health services corporation or any self-insured group health benefit plan of any type or description.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Green, Maddie[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C60F962FBD5146489D22328FB86106E8-MCMILLIAN, MADDIE]
Sent: Tue 3/21/2023 7:33:08 AM (UTC-05:00)
Subject: SB 49
view.pdf

FYI just perfected by the Senate
https://www.senate.mo.gov/23info/BTS_Web/ShowAmendment.aspx?Id=202

Sent from my iPhone

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
Cc: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Corrigan, William[William.Corrigan@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Wed 3/29/2023 8:48:43 AM (UTC-05:00)
Subject: Fwd: Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor on petition numbers 2024-077 to 2024-087

More-

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: March 28, 2023 at 11:49:03 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor on petition numbers 2024-077 to 2024-087

Ray,
Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor:

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years. Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri.

Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the suggested versions require no

AMERICAN OVERSIGHT

parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result.The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it).With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed.What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy.A growing population encourages others to move here which in turn results in additional fiscal activity.And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)

Sam

AMERICAN OVERSIGHT

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT



CAMPAIGN

LIFE

MISSOURI

AMERICAN OVERSIGHT

P.O. Box 142585 • St. Louis, MO 63114-0585

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of

AMERICAN OVERSIGHT

one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, but many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20001
Email: rachel.greszler@heritage.org

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

AMERICAN OVERSIGHT

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]
Cc: Corrigan, William[William.Corrigan@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Sun 4/2/2023 10:55:04 PM (UTC-05:00)
Subject: Fwd: Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor
image001.jpg
Greszler_Heritage_Fiscal Note Missouri Pro-Abortion Petitions.docx

another letter in the earlier stage.

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: April 2, 2023 at 9:37:38 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor

Ray,
Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor.
Rachel is a Senior Research Fellow, Grover M. Hermann Center for the Federal Budget at Heritage.
Sam
Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

AMERICAN OVERSIGHT

Comment on Proposed Ballot Initiatives 2024-077 through 2024-087 filed by Missourians for Constitutional Freedom, all titled "The Right to Reproductive Freedom Initiative"

Date: 7 April 2023 [Submitted Via Email]

To: The Honorable John R. Ashcroft
Secretary of State
State of Missouri

Dear Secretary Ashcroft:

This comment is submitted in response to the Missouri Secretary of State's receipt of a series of proposed ballot amendments which would significantly alter the way abortion is regulated in Missouri, permitting more abortions with less oversight than at any point in recent memory.

The Secretary of State's summaries will provide Missourians with critical information about these proposals and must accurately address the extent to which, if adopted, any of the proposals would fundamentally change abortion and parental rights in Missouri. Although there is a separate fiscal statement, it is worth noting that passage of any of these proposals could expose the state to litigation expenses and potentially costly legal liability if healthcare professionals are forced to violate their federally-protected conscience rights. The Secretary of State's summaries will be the official statement of the government of Missouri and must accurately explain to voters the stakes of enacting the proposals, not just to mothers and their children, but to the state as a whole.

The proposals would be a significant break from Missouri's longstanding commitment to the life, health, and well-being of unborn children.

Although there is some variation among the proposals, we write to highlight the similarities. Every proposal would create a fundamental right to abortion and immunize from liability anyone "assisting a person" in acting upon that right "with that person's consent." This would essentially invalidate Missouri's requirements that abortions be performed by a licensed physician with clinical privileges at a local hospital. It would provide cover for a coercive parent, partner or abuser who obtained abortion drugs online if she later tells police that she consented to taking the medications.

Proposals 77, 78, 79, 82, 84, 86, and 87 would infringe on the parental rights of Missouri families by striking the parental consent law and allowing abortions to be done on girls of any age without their parents even knowing. Even those proposals that purport to permit a lesser version of parental consent or notice (Proposals 80, 81, 83, and 85) only authorize one-parent consent, even where there is shared custody. Moreover, the amendments gut parental consent authorization by allowing the abortionist to disregard the lack of consent where the abortionist "in good faith" believes *either* the minor is mature and capable of consenting, *or* consent is not in her best interests, *or* consent "may" lead to "physical or emotional harm to the minor." There is no authorization of even judicial bypasses; the abortionist makes the call in-house, with no independent review even though he or she has a financial incentive to do the abortion. In short, the supposed authorization of parental consent is a sham. This would place young Missourians at a heightened risk of making irreversible, damaging decisions at the behest of a partner or abuser without the counsel or support of the people who have the greatest interest in their wellbeing, their mom and dad.

Not one of these proposals considers the life, health, or future of the tiny human in the womb, except, quite weakly, after 24 weeks LMP or after viability, both measurements that fall many weeks after an unborn child feels pain. Even

AMERICAN OVERSIGHT

that authorization of limits on late-term abortions has no real teeth, as it imposes an exception for "good faith" abortionist procedures done to protect maternal "physical or *mental* health" or for a "nonviable pregnancy" (which presumably means serious prenatal maladies). In other words, the amendment requires the state to "trust the abortionist" even with late-term abortions. This change in policy, if adopted, would contradict two centuries of Missouri laws. Missouri criminalized "caus[ing] or procur[ing] a miscarriage" as early as 1825, and during the five decades of *Roe v. Wade*, Missouri repeatedly passed and defended pro-life laws and the cause of the unborn in federal courts as it pushed back against *Roe.*

For over three decades it has been the policy of the state of Missouri that:

> "(1) The life of each human being begins at conception;
>
> (2) Unborn children have protectable interests in life, health, and well-being;
>
> (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.
>
> …[T]he laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state."

Missouri has enacted dozens of laws to this effect, nearly all of which would be invalidated by any of these proposals. The variations among these proposals—whether abortion funding is expressly disavowed, whether a weak parental consent regulation could remain in place, and whether any post-24 week or post-viability limits are allowed—which proponents falsely call "compromise"—are dwarfed by the huge concession handed to the abortion industry: the creation of a fundamental right to abortion.

Several of the proposals would invalidate Missouri's prohibition on taxpayer funding for abortion, which has been in effect for decades. Proposals 78, 80, 82, 83, and 86 would likely *require* taxpayer funding, and the remainder could be used to chip away at or overturn the funding prohibition by leveraging the newly created fundamental right to abortion with alternative theories like equal protection, privacy, or due process. Creating a fundamental right to abortion arms pro-abortion attorneys with a potent weapon against all remaining limits on abortion, no matter how modest.

The proposals would permit abortion for virtually any reason, even later in pregnancy when the unborn child can feel excruciating pain.

Currently, abortion is illegal in Missouri except in the case of a medical emergency. Missouri voters have consistently elected pro-life lawmakers who passed the "trigger law," which took effect on June 24, 2022, when the Supreme Court of the United States returned "the authority to prohibit abortion at all stages of pregnancy" to Congress and the states. The Amendment would set Missouri back decades, returning the state to a regime where abortion doctors are unaccountable for harm they cause to mothers and unborn children are unprotected.

Abortions in Missouri would be almost totally unregulated, and prosecutors would be unable to act if a woman or girl within their jurisdiction was harmed during an abortion. If notorious Philadelphia abortionist Kermit Gosnell, currently serving a life sentence, were to set up shop in Missouri, there is little the state could do about it if he could prove that there were women who sought out his services—denying or revoking the license of a practitioner or business might "infringe on that person's autonomous decision-making" in violation of the proposals.

Proposals 77, 78, and 79 do not identify any gestational limit whatsoever, meaning that children could be killed at any time in pregnancy. Proposals 80, 81, 82, and 84 weakly authorize some limits past 24 weeks' gestation, but since this is past the point when children reach viability, which is now closer to 22 weeks' gestation, these proposals would

AMERICAN OVERSIGHT

allow for the killing of unborn children who could survive outside the womb. Similarly, Proposals 83, 85, 86, and 87, which weakly authorize some limits post-viability, leave the determination of viability to the abortionists' discretion even though he or she has a financial interest in ensuring that the procedure happens. By defining fetal viability as a point in pregnancy when a child can survive "without the application of extraordinary medical measures," the proposals would allow for the late-term abortion of a child who would survive if he or she were treated in the NICU simply because that child needed medical treatment early in life. Leaving ultimate discretion in the hands of the abortionist could be used to allow the killing (through direct or indirect action) of a child born alive after a botched abortion.

Missouri would be extremely limited in how it could restrict late-term abortions. In some proposals, the "health" exception is left undefined, leaving it to the courts to determine how broadly it might be interpreted. A court ideally would look to existing Missouri law and narrowly define it as "a serious risk of substantial and irreversible impairment of a major bodily function." But the proposals abrogate this definition by adding "mental" health and leaving it to the abortionist to make the judgment. In practical effect, these proposals would impose the wide-open definition from *Doe v. Bolton*, namely that "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health." If health means anything and everything, there would be virtually no restriction on abortions throughout pregnancy in Missouri. Ironically, the proposals would prevent commonsense laws that require healthcare professionals to provide women with information about the well-documented negative effects abortion has on a woman's physical, mental, and emotional health.

Furthermore, the proposals would prevent the state from asserting any interests on behalf of the child and would likely be used to challenge laws protecting the conscience rights of healthcare professionals. Laws that help women make their decision such as informed consent, reflection periods, and counseling about resources and alternatives to abortion could all be struck down, even though serving otherwise legitimate state's interests, just because those interests arguably are not *directly* tied to the "health of a person seeking care." The proposals could have unforeseen consequences on child-welfare laws or other laws that govern the treatment of human remains, reporting deaths of human beings, or other laws adjacent to the abortion procedure.

The proposals do not recognize Missouri's interest in the unborn child. His or her health, wellbeing, or chance at life is never considered anywhere in the proposals as currently written. If added to the Missouri Constitution, the proposals would assert that Missouri has *no* interest in the child and could be used as a tool of future courts to invalidate any protections that remained.

Missouri would rival California, Colorado, and New Mexico in its extremism if these proposals were to pass. The state would become an abortion destination for the region.

The Secretary's summaries must explain the stakes of these proposals, including the major changes each would make to the Missouri Constitution.

The proposals would create a right to abortion in Missouri law which has never existed in the state's history by extending even further than the failed framework that the Supreme Court of the United States discarded in 2022. As the multitudinous decisions of the Supreme Court demonstrate, *Roe v. Wade*'s creation of a "constitutional right" to abortion did not resolve the issue. Instead, the Court faced decades of abortion-related litigation over the Court's invented "right" to abortion and efforts by legislatures to affirm the sanctity of unborn human life, protect women from abusive practices, and address the problem of unsafe abortion practices.

If Missouri were to pass such an amendment, the state's Supreme Court would have to grapple with a similar parade of questions, to be answered with only the aid of vague state constitutional text. These proposals would expose the state to vast liability and clog up state courts with decades of litigation and showdowns between the three branches of government.

The Secretary's summaries must not fall into the same dehumanizing pattern we've been subjected to since the imposition of *Roe v. Wade,* applying euphemisms like the "right to abortion" when the reality of each of these

AMERICAN OVERSIGHT

proposals is clear. This would establish a legal right, greenlit by the state constitution, to kill tiny, innocent human beings. Even in *Roe,* the Court acknowledged, citing to an American Medical Association report, that what was at stake was the "destruction of human life."

In that report, published in 1871, the AMA doctors stated: "**We had to deal with human life.** In a matter of less importance we could entertain no compromise. **An honest judge on the bench would call things by their proper names. We could do no less**" [emphasis added].

150 years later, with extraordinary advances in medical technology that give us a window into the womb, we must be honest just as those doctors were. What's at stake is the lives of unborn babies, the safety of their mothers, and the degradation of medical practice and the law in Missouri.

We oppose the proposed ballot amendments and encourage the Secretary of State to publish a final summary that accurately reflects the magnitude of this initiative's change to Missouri's law and culture.

Submitted on behalf of Susan B. Anthony Pro-Life America and ACLJ Action.

Stephen Billy, J.D.
VP of State Affairs

Katie Glenn, J.D.
State Policy Director
Susan B. Anthony Pro-Life America
sbaprolife.org
Arlington, VA
202-223-8073

James Rockas
Executive Director

Robert Burkett
Senior Advisor and Chief of Staff
ACLJ Action, Inc.
acljaction.org
Washington, D.C.
833-437-0399

Susan B. Anthony Pro-Life America is a network of more than one million pro-life Americans nationwide, dedicated to ending abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders.

ACLJ Action, Inc. is an organization dedicated to the defense of constitutional values, liberty, and religious freedom in the U.S. and abroad.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 1 (2024-077)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 1 (2024-077)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 T236295 PM 3:17

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 NOV -8 PM 3:17

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:___ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as"The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which entails the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures other than as required by federal law.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 2 (2024-078)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 2 (2024-078)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:18

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
2023 MAR 7 PM 3:18

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 AUG -8 PM 3:18

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise be subject to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

7. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 3 (2024-079)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 3 (2024-079)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T236295

2023 MAR 7 PM 3:19

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 NOV -1 PM 3:19

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

5. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

6. Nothing in this Section requires government funding of abortion procedures.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 4 (2024-080)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

2023 MAR -8 PM 3:20

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

2023 MAR 10 PM 3:20

Office Use: T236295

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR 1 PM 3:20

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 5 (2024-081)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 5 (2024-081)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:21

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 MAR -8 PM 3:21

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -6 PM 3:21

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting any individual in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 6 (2024-082)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 6 (2024-082)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 3:22

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T236295 2023 MAR -8 PM 3:22

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2021 MAY -8 PM 3:22

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 7 (2024-083)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 7 (2024-083)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

2023 MAR -8 PM 3:24

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: 2023 MAR 8 PM 3:24

1. **Statement Information**

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. **Committee Information**

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. **Treasurer/Deputy Treasurer Information**

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. **Additional Committee Information**

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. **Official Bank Account Information (required by all committees)**

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. **Candidate Supported or Opposed (candidate committees must include self, if candidate)**

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. **Ballot Measure Supported or Opposed (campaign committees must complete this section)**

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. **Signature(s) Check certification(s) & sign (required by all committees)**

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 NOV -8 PM 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:___
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 8 (2024-084)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 8 (2024-084)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna R. James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

2023 MAR -8 PM 3:21

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
2023 MAR -8 PM 3:21

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR 18 PM 3:24

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

My Commission Expires:___ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the term "Government" means:

(1) the state of Missouri; or

(2) any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 9 (2024-085)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 9 (2024-085)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

RECEIVED
2023 MAR -8 PM 3:25

Fitz-James
LAST NAME*

Anna
FIRST NAME*

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)
P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
T236295
2023 MAR -3 PM 3:25

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:25

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

(1) obtaining consent may lead to physical or emotional harm to the minor;

(2) the minor is mature and capable of consenting to an abortion; or

(3) obtaining consent would not be in the best interest of the minor.

7. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

8. Nothing in this Section requires government funding of abortion procedures.

9. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

10. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 10 (2024-086)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 10 (2024-086)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -9 PM 3:25

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use: T226295 2023 MAR -8 PM 3:26

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____), _____ being first duly sworn, say (print names of signers)

NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

2023 MAR -8 PM 3:28

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Street Address of Affiant

_____
Printed Name of Affiant

_____
City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D.

_____
Signature of Notary

_____ My Commission Expires:__
Address of Notary (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

RECEIVED
MAR 09 2023
MISSOURI
ATTORNEY GENERAL

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 11 (2024-087)

Dear Attorney General Bailey:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

Pursuant to Section 116.332, RSMo, we are referring the proposed petition sample sheet to your office for review. Please respond within the next ten days as required by Section 116.332.3, RSMo.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Diana Haines
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ELECTIONS DIVISION
(573) 751-2301

March 9, 2023

The Honorable Scott Fitzpatrick
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Anna Fitz-James regarding a proposed constitutional amendment to Article I, version 11 (2024-087)

Dear Auditor Fitzpatrick:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Anna Fitz-James on March 8, 2023.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Andrew Bailey
Sheri Hoffman
Trish Vincent

AMERICAN OVERSIGHT

AMERICAN
OVERSIGHT

INITIATIVE PETITION SUBMISSION COVER PAGE

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

Pursuant to Sections 116.100 and 116.332, RSMo, upon submitting a petition, please provide the following contact information:

March 8, 2023
DATE OF SUBMISSION

Fitz-James
LAST NAME*

Anna
FIRST NAME*

2023 MAR -8 PM 2:27

P.O. Box 2187
STREET ADDRESS*

St. Louis
CITY*

MO
STATE*

63158
ZIP CODE*

314-691-0422
PHONE*

EMAIL

ORGANIZATION

CHECK ONE*:

☑ A PERSON OR COMMITTEE, OTHER THAN ME, IS FUNDING A PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET. (IF YOU ARE REQUIRED TO FILE A STATEMENT OF COMMITTEE ORGANIZATION PURSUANT TO SECTION 130.021.5, RSMO., A COPY MUST BE ATTACHED.)

☐ I AFFIRM THAT NO PORTION OF THE DRAFTING OR SUBMISSION OF THIS SAMPLE SHEET HAS BEEN FUNDED BY A PERSON OR COMMITTEE OTHER THAN ME.

Anna Fitz-James M.D.
SIGNATURE OF PERSON SUBMITTING THE SAMPLE SHEET*

*REQUIRED INFORMATION

AMERICAN OVERSIGHT

Missouri Ethics Commission (MEC)

P.O. Box 1370, Jefferson City MO 65102, (800) 392-8660, www.mec.mo.gov

Statement of Committee Organization

Office Use:
T23629 2023 MAR -8 PM 3:27

1. Statement Information

Date: 03/07/2023

Type: ■ New ☐ Amended (if amending, enter MEC ID _____ & section changed _____)

2. Committee Information

Missourians for Constitutional Freedom
Name of Committee

PO Box 2187 St. Louis, MO 63158
Committee Mailing Address, City, State, & Zip

(314) 502-9808
Telephone Number

moballotcampaigns@gmail.com
Official Committee Email Address

Unknown
County Clerk, Board of Election Commissioners, Federal PAC/Out of State Committee

Committee Type: ■ Campaign ☐ Candidate ☐ Continuing(PAC) ☐ Debt Service ☐ Exploratory ☐ Political Pary

3. Treasurer/Deputy Treasurer Information

Michael Pridmore
Treasurer's Name (First & Last)

moballotcampaigns@gmail.com
Treasurer's Email Address (optional)

PO Box 2187 St. Louis, MO 63158
Treasurer's Mailing Address, City, State, & Zip

(314) 502-9808
Phone 1

Phone 2

Deputy Treasurer's Name (if one appointed)

Deputy Treasurer's Email Address (optional)

Deputy Treasurer's Mailing Address, City, State, & Zip

Phone 1

Phone 2

4. Additional Committee Information

Additional Committee Officer's Name & Title (if any)

Additional Committee Officer's Mailing Address, City, State, & Zip

Connected Organization's Name (if any)

Connected Organization's Mailing Address, City, State, & Zip

CANDIDATES: Do you have more than one candidate committee? ☐ Yes (refer to instructions on back) ■ No

5. Official Bank Account Information (required by all committees)

Commerce Bank 3134 S Grand Blvd St. Louis, MO 63118
Name & Mailing Address, City, State, & Zip of Financial Institution

Missourians for Constitutional Freedom
Account Name

On File
Account Number

6. Candidate Supported or Opposed (candidate committees must include self, if candidate)

Name & Mailing address, City, State, & Zip of Candidate

Phone 1

Phone 2

Election Date

Office Sought & Political Subdivision

Political Party

Support or Oppose

7. Ballot Measure Supported or Opposed (campaign committees must complete this section)

TBD
Name of Ballot Measure

11/05/2024,Statewide
Election Date & Political Subdivision

Support
Support or Oppose

8. Signature(s) Check certification(s) & sign (required by all committees)

■ affirm and attest under penalty of perjury that information and facts in this report are complete, true, and accurate. I further acknowledge that I am aware that any false statement or declaration made herein is punishable under Ch. 575 RSMo.

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Committee Treasurer

ELECTRONICALLY FILED Mar 7 2023 10:06 AM
Candidate (Candidate Committees Only)

MO 300-1308
Packet (Rev. 10/2019)

AMERICAN OVERSIGHT

AMERICA OVERSIGHT

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

County: _____

INITIATIVE PETITION

Page No: _____

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 5th day of November, 2024, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI, COUNTY OF _____ I, _____ being first duly sworn, say (print names of signers)

	NAME (Signature)	DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

2023 NOV -8 PM 3:27

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County (or city of St. Louis). FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer: _____

Subscribed and sworn to before me this _____ day of _____, A.D.

_____ Signature of Affiant (Person obtaining signatures)

_____ Street Address of Affiant

_____ Printed Name of Affiant

_____ City, State and Zip Code of Affiant

_____ Signature of Notary

_____ Address of Notary

_____ My Commission Expires:__ (Seal)

NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."

2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.

3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.

4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.

5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. Nothing in this Section requires government funding of abortion procedures.

8. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

9. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

AMERICAN OVERSIGHT



AMERICAN
OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-83 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-77 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … entails the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortion, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to "reproductive freedom." This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, and health and safety standards for abortion facilities. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite the assertion to the contrary in Section 6). For example, Section 5 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also be required to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

Under the proposed amendment, Missouri taxpayer dollars could be required to fund abortion, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for controversial and dangerous procedures.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for abortion, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-78 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortions, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-79 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions and informed consent. It will force Missouri taxpayers to pay for abortions, contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortion, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to "reproductive freedom." This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, and health and safety standards for abortion facilities. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 6's assertion to the contrary). For example, Section 5 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 6 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

Under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for controversial and dangerous procedures.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as parental involvement for minors' abortions.

It would also force Missouri taxpayers to pay for contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-80 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only

AMERICAN OVERSIGHT

further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-81 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only

AMERICAN OVERSIGHT

further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed "Reproductive Freedom" Amendment Could Mandate State Taxpayer Funding of Abortion Procedures and Providers

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 8's assertion to the contrary). For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 8 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers. They would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

AMERICAN OVERSIGHT

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-82 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," Missouri voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-83 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-84 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Abortion After 24 Weeks is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after 24 weeks of gestation … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 7's assertion to the contrary). For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 7 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-85 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Language Purporting to Require Parental Involvement is Illusory

Section 6 purports to permit—but not mandate—parental consent for minors' abortions. However, the required exceptions to the requirement will essentially invalidate the rule. Specifically, the proposed language allows a financially interested abortion provider to unilaterally vitiate the rule when he or she believes that the "minor is mature and capable of consenting to an abortion" or "obtaining consent would not be in the best interests of the minor." An abortion provider has no business making these determinations which rightly belong to the minor's parents.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

AMERICAN OVERSIGHT

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 8's assertion to the contrary). For example, Section 7 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 8 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation

AMERICAN OVERSIGHT

of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-86 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

AMERICAN OVERSIGHT

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers. For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE

April 6, 2023

Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001

The Honorable John R. Ashcroft
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101

This comment provides legal analysis of Referendum Petition 2024-87 which proposes an amendment to Article I of the Missouri Constitution. The proposed amendment seeks to establish a "fundamental right to reproductive freedom."

The Secretary of State is required to write a ballot "summary statement" for every initiative measure. The Missouri Supreme Court has determined that the "summary statement" should "fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled" and "accurately reflect the legal and probable effects of the proposed initiative."[1]

In this case, the proposed amendment language is dangerously vague and endangers minors and parental rights. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws such as medically appropriate health and safety standards for abortion facilities and informed consent. It will force Missouri taxpayers to pay for abortions, as well as contraception, sterilizations, infertility treatment, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services for non-residents, including having sex-traffickers bring their victims to Missouri to procure free abortions all while avoiding criminal liability for their actions.

[1] *See Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. 2012) (internal citations omitted).

AMERICAN OVERSIGHT

Proposed "Reproductive Freedom" Amendment is Dangerously Vague

Missouri voters deserve to know exactly what they are voting on—especially when asked to amend their foundational document: the state's constitution. The proposed amendment language fails to accurately inform Missourians of the meaning of "reproductive freedom" and the full implications of a vote in favor of the proposed amendment.

The proposed amendment language centers on the term "reproductive freedom" which is not adequately defined. The proposal misleadingly provides that "reproductive freedom … is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, abortion care, miscarriage care, and respectful birth conditions." This is not a full and fair definition. The terms used to describe "reproductive freedom" are not defined, and voters will be left to guess what they mean.

The language is vague and could be interpreted by Missouri courts to encompass other medical procedures such as the removal of healthy reproductive organs and the provision of cross-sex hormones and other harmful chemicals that alter the normal functioning of the male or female body.

The proposed language also purports to declare "reproductive freedom" as a "fundamental right." The language of this amendment does not inform voters of the meaning and import of "fundamental rights" which have traditionally included rights reflected in the U.S. Constitution and the Missouri Bill of Rights, such as right to free speech and the right trial by jury.

Fundamental rights are rights that have been recognized as requiring a high degree of protection from government encroachment. Government infringement on or regulation of these rights is subject to the highest degree of judicial scrutiny. This level of scrutiny is commonly called "strict scrutiny" and requires that state officials, when proposing a regulation or restriction on that right, must demonstrate a "compelling state interest." Further, the regulation or restriction must be narrowly tailored to effectuate that compelling interest.

Notably, even under the now overruled decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*, abortion was not considered a "fundamental right" under the U.S. Constitution as abortion regulations and restrictions were not judged under the

AMERICAN OVERSIGHT

strict scrutiny standard, but under the lesser "undue burden" standard. It is not, therefore, accurate to claim that the proposed amendment language simply resurrects and codifies *Roe v. Wade*. It goes dangerously beyond *Roe*.

Proposed Amendment "Opens the Door" to Infanticide

The proposed amendment provides that "no person shall be penalized, prosecuted or otherwise subject to adverse action based on their actual, potential, perceived, or alleged ***pregnancy outcomes***, including but not limited to miscarriage, stillbirth or abortion" (emphasis added). This provision is dangerously broad and ill-defined.

There is no guidance as to what is meant by "pregnancy outcome." Does it include "having to care for a newborn baby"? Does it include the "right" to neglect or abandon the newborn? We don't know. This intentional failure to properly define the breadth and scope of the provision "opens the door" to infanticide: the killing of a born, living baby.

Proposed "Reproductive Freedom" Amendment Threatens the Freedom of Conscience of Medical Providers

The proposed constitutional amendment provides that the individual's "right to reproductive freedom" shall not be "denied, interfered with, delayed, or otherwise restricted" by the state officials. Laws protecting the freedom of conscience of healthcare professionals and permitting them to opt out of performing or participating in abortions, the removal of healthy reproductive organs, the provision of cross-sex hormones, and other objectionable procedures could be seen as a "denial" of—or at least an "interference" with—a person's "right to "reproductive freedom." In this "battle of rights," the historically fundamental freedom of conscience (explicitly recognized by both the U.S. Constitution and the Missouri Bill of Rights) may be deemed subservient to the newly created "right" to abortion. This threat to freedom of conscience is untenable.

The paramount importance of freedom of conscience has been repeatedly affirmed. Our Nation's history, tradition, and jurisprudence confirm that Americans—including healthcare professionals—cannot be forced to commit an act that is against their moral, religious, or conscientious beliefs.

America's Founders were united in a desire to protect freedom of conscience. For example, Thomas Jefferson made clear that no provision in the Constitution "ought

AMERICAN OVERSIGHT

to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."[2] Likewise, James Madison, considered the Father of the Bill of Rights, was deeply concerned that the freedom of conscience of all Americans be protected. He described conscience as "the most sacred of all property."[3]

The U.S. Supreme Court has consistently ruled in favor of protecting the freedom of conscience of every American, holding that "[f]reedom of conscience… cannot be restricted by law."[4] But the proposed language undermines this sacred freedom and will lead to more nurses, doctors, and other medical professionals leaving the medical field altogether rather than having their consciences violated.

Proposed "Reproductive Freedom" Amendment Repeals Commonsense and Protective Abortion Laws and Precludes Their Future Enactment

Missouri currently prohibits all abortions except when an abortion is necessary to "avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman." Missouri law also contains many protective, abortion-related laws including a requirement that a licensed physician perform an abortion, informed consent, parental consent for minors' abortions, health and safety standards for abortion facilities, and limits on taxpayer funding of abortion. Each of these commonsense requirements is jeopardized by the proposed amendment.

The proposed amendment provides that the State may not deny, interfere with, delay, or restrict the "fundamental right" to abortion. Application of this provision means that existing protective laws will likely be seen as "interfering with" the newly created constitutional "right" to abortion and will likely be invalidated by Missouri courts. The Legislature will be further prohibited from enacting commonsense legislation to respond to the growing medical evidence of abortion's harms to women and from evidence of abortion provider's often substandard facilities and practices. Missourian—and the citizens of other states—will be left completely unprotected.

---

[2] Jefferson, Letter to New London Methodists (1809).
[3] Milton, THE QUOTABLE FOUNDING FATHERS: A TREASURY OF 2,500 WISE AND WITTY QUOTATIONS 36-37 (2005).
[4] *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (emphasis added).

AMERICAN OVERSIGHT

Language Purporting to Allow Regulations on Post-Viability Abortions is Illusory

Section 4 of proposed amendment states that "the general assembly may enact laws that regulate the provision of abortion "after Fetal Viability … provided that under no circumstances shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating healthcare professional is needed to protect the life or physical or mental health of the pregnant" woman. The broad exceptions for "physical or mental health" renders this purported protection illusory. This unlimited "health" exception will be used to "rubber-stamp" unnecessary, dangerous, and inhumane late-term abortions.

The proposed amendment further defines "Fetal Viability" as "the point in a pregnancy when, in the good faith judgment of the treating healthcare professional and based on the particular facts of the case, there is a ***significant likelihood*** of the fetus's sustained survival outside the uterus ***without the application of extraordinary medical measures***" (emphasis added). This definition is medically inaccurate and will callously endanger many pre-term infants who would otherwise survive after birth.

The vast majority of abortion-related state laws use a medically appropriate definition of "viability" such as: "that stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a ***reasonable likelihood*** of sustained survival of the unborn child outside the body of his or her mother, ***with or without artificial support***" (emphasis added).

It is important to note the significant (emphasized) differences between the proposed amendment's definition of "viability" and the medically correct definition. First, the proposed amendment requires a "significant" likelihood of sustained survival, while the correct definition requires "a reasonable likelihood" of sustained survival. How will a "significant likelihood of sustained survival" be determined? How many babies will be denied a chance at life under this provision? We don't know, and neither will Missouri's voters who will be asked to approve this medically inappropriate standard.

Second, the proposed amendment's definition of "viability" precludes the application of "extraordinary measures," while the medically correct definition includes the application of "artificial support." Again, what "extraordinary measures" are

AMERICAN OVERSIGHT

contemplated by the language? How many babies who would otherwise have a good chance at survival will instead die because of a denial of care?

These concerns further support the conclusion that the proposed amendment "opens the door" to infanticide.

Proposed "Reproductive Freedom" Amendment Endangers Parental Rights

In addition to not knowing what is meant by a "fundamental right" to "reproductive freedom," voters will also be unwittingly compromising parental rights if the proposed constitutional amendment is approved.

The proposed amendment guarantees a "fundamental right" to "reproductive freedom" to every "person." This means that anyone, including a minor (male or female), has a "right" to abortion, contraception, sterilization, infertility treatment, and other procedures, including the removal of healthy reproductive organs. These and other complex and dangerous procedures will occur without the knowledge or consent of parents.

This dangerous and implicit repeal of Missouri's existing parental involvement requirements will ensure that minors—including those being sex-trafficked—can be brought into Missouri to receive "no-questions-asked" abortions. This will only further embolden traffickers to continue to wreck the lives of innocent young women in Missouri and beyond.

Parents are best equipped to protect and care for their children's health and well-being. They have both the right and responsibility to do so. The proposed amendment language would eviscerate that fundamental right.

Proposed Amendment Will Force Missouri Taxpayers to Fund Abortion, Contraception, Sterilizations, Fertility Treatments, Cross-Sex Hormones, and Puberty Blockers

The U.S. Supreme Court and federal law prohibit taxpayer dollars from funding abortions. Strong majorities of taxpayers agree that tax dollars should not be used to pay for abortion. Yet under the proposed amendment, Missouri taxpayer dollars could be required to fund abortions, birth control, fertility treatments, cross-sex hormones, and even puberty blockers.

AMERICAN OVERSIGHT

Multiple provisions in the proposed amendment could be interpreted to require state taxpayer funding of abortion procedures and abortion providers (despite Section 7's assertion to the contrary). For example, Section 6 provides that the "Government shall not discriminate against persons providing or obtaining reproductive health care." Since Missouri funds some types of health care, it could also have to fund "reproductive health care," including abortion procedures and providers, under the proposed amendment.

Further, while Section 7 claims that it does not require "government funding of abortion procedures," it may still be interpreted to mandate state-taxpayer funding of some aspects of "abortion care," which, as noted above, is not appropriately defined. It also does not explicitly prohibit state-taxpayer funding of those individuals and organizations providing abortions or other "reproductive care."

Missourians would be forced to pay for these procedures and products for residents and non-residents, minors and adults, males and females. Missouri will join California, New York, and Minnesota as a dangerous, unregulated, and unrestricted "Wild West" for abortions to the detriment of women, infants, crime victims, and Missouri taxpayers.

Proposed Amendment Ignores Legitimate State Interests

The U.S. Supreme Court has recognized that states have multiple interests supporting abortion regulations. These "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability."[5]

The proposed amendment ignores these legitimate state interests, providing that the only "compelling interest" that can inform abortion regulations is "improving or maintaining the health of the person seeking care." This excessively narrow definition improperly "handcuffs" legislators in their efforts to protect and serve all Missourians, including the unborn. It also ensures that the only standards of care that will be consulted are those promulgated by financially interested abortion

[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).

AMERICAN OVERSIGHT

providers and advocacy groups. This wrongly ignores the growing evidence of abortion's harms to women.

***

The proposed amendment goes far beyond codifying the now-defunct decision in *Roe v. Wade*. The language is dangerously vague and will compromise parental rights and endanger minors and crime victims. It also threatens the freedom of conscience of Missouri's healthcare professionals and precludes the enactment and enforcement of commonsense, protective laws.

It would also force Missouri taxpayers to pay for abortions, contraception, sterilizations, fertility treatments, and even the surgical removal of healthy reproductive organs. Taxpayers will be forced to fund these services and products even for non-residents and for crime victims when the crimes are not reported to law enforcement or appropriately addressed. The proposed amendment victimizes rather than protects and empowers women and girls.

Respectfully Submitted,

/s/ Denise M. Burke
Senior Counsel

AMERICAN OVERSIGHT

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE NO. 2 FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 49, 236 & 164

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS MOON, HOSKINS, BRATTIN, CARTER, GANNON, BEAN, COLEMAN, KOENIG, ESLINGER, THOMPSON REHDER, FITZWATER, TRENT, BLACK, BROWN (26), LUETKEMEYER, O'LAUGHLIN, SCHROER, CRAWFORD AND EIGEL.

0202S.20P KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 208.152, 217.230, and 221.120, RSMo, and to enact in lieu thereof four new sections relating to gender transition procedures.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 208.152, 217.230, and 221.120, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 191.1720, 208.152, 217.230, and 221.120, to read as follows:

191.1720. 1. This section shall be known and may be cited as the "Missouri Save Adolescents from Experimentation (SAFE) Act".

2. For purposes of this section, the following terms mean:

(1) "Biological sex", the biological indication of male or female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an

AMERICAN OVERSIGHT

individual's psychological, chosen, or subjective experience of gender;

(2) "Cross-sex hormones", testosterone, estrogen, or other androgens given to an individual in amounts that are greater or more potent than would normally occur naturally in a healthy individual of the same age and sex;

(3) "Gender", the psychological, behavioral, social, and cultural aspects of being male or female;

(4) "Gender transition", the process in which an individual transitions from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, and may involve social, legal, or physical changes;

(5) "Gender transition surgery", a surgical procedure performed for the purpose of assisting an individual with a gender transition, including, but not limited to:

(a) Surgical procedures that sterilize, including, but not limited to, castration, vasectomy, hysterectomy, oophorectomy, orchiectomy, or penectomy;

(b) Surgical procedures that artificially construct tissue with the appearance of genitalia that differs from the individual's biological sex, including, but not limited to, metoidioplasty, phalloplasty, or vaginoplasty; or

(c) Augmentation mammoplasty or subcutaneous mastectomy;

(6) "Health care provider", an individual who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession;

(7) "Puberty-blocking drugs", gonadotropin-releasing hormone analogues or other synthetic drugs used to stop

AMERICAN OVERSIGHT

luteinizing hormone secretion and follicle stimulating hormone secretion, synthetic antiandrogen drugs to block the androgen receptor, or any other drug used to delay or suppress pubertal development in children for the purpose of assisting an individual with a gender transition.

3. A health care provider shall not knowingly perform a gender transition surgery on any individual under eighteen years of age.

4. (1) A health care provider shall not knowingly prescribe or administer cross-sex hormones or puberty-blocking drugs for the purpose of a gender transition for any individual under eighteen years of age.

(2) The provisions of this subsection shall not apply to the prescription or administration of cross-sex hormones or puberty-blocking drugs for any individual under eighteen years of age who was prescribed or administered such hormones or drugs prior to August 28, 2023, for the purpose of assisting the individual with a gender transition.

(3) The provisions of this subsection shall expire on August 28, 2027.

5. The performance of a gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking drugs to an individual under eighteen years of age in violation of this section shall be considered unprofessional conduct and any health care provider doing so shall have his or her license to practice revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state.

6. (1) The prescription or administration of cross-sex hormones or puberty-blocking drugs to an individual under eighteen years of age for the purpose of a gender transition shall be considered grounds for a cause of action

AMERICAN OVERSIGHT

against the health care provider. The provisions of chapter 538 shall not apply to any action brought under this subsection.

(2) An action brought pursuant to this subsection shall be brought within fifteen years of the individual injured attaining the age of twenty-one or of the date the treatment of the injury at issue in the action by the defendant has ceased, whichever is later.

(3) An individual bringing an action under this subsection shall be entitled to a rebuttable presumption that the individual was harmed if the individual is infertile following the prescription or administration of cross-sex hormones or puberty-blocking drugs and that the harm was a direct result of the hormones or drugs prescribed or administered by the health care provider. Such presumption may be rebutted only by clear and convincing evidence.

(4) In any action brought pursuant to this subsection, a plaintiff may recover economic and noneconomic damages and punitive damages, without limitation to the amount and no less than five hundred thousand dollars in the aggregate. The judgment against a defendant in an action brought pursuant to this subsection shall be in an amount of three times the amount of any economic and noneconomic damages or punitive damages assessed. Any award of damages in an action brought pursuant to this subsection to a prevailing plaintiff shall include attorney's fees and court costs.

(5) An action brought pursuant to this subsection may be brought in any circuit court of this state.

(6) No health care provider shall require a waiver of the right to bring an action pursuant to this subsection as a condition of services. The right to bring an action by or

AMERICAN OVERSIGHT

through an individual under the age of eighteen shall not be waived by a parent or legal guardian.

(7) A plaintiff to an action brought under this subsection may enter into a voluntary agreement of settlement or compromise of the action, but no agreement shall be valid until approved by the court. No agreement allowed by the court shall include a provision regarding the nondisclosure or confidentiality of the terms of such agreement unless such provision was specifically requested and agreed to by the plaintiff.

(8) If requested by the plaintiff, any pleadings, attachments, or exhibits filed with the court in any action brought pursuant to this subsection, as well as any judgments issued by the court in such actions, shall not include the personal identifying information of the plaintiff. Such information shall be provided in a confidential information filing sheet contemporaneously filed with the court or entered by the court, which shall not be subject to public inspection or availability.

7. The provisions of this section shall not apply to any speech protected by the First Amendment of the United States Constitution.

8. The provisions of this section shall not apply to the following:

(1) Services to individuals born with a medically-verifiable disorder of sex development, including, but not limited to, an individual with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46,XX chromosomes with virilization, 46,XY chromosomes with undervirilization, or having both ovarian and testicular tissue;

AMERICAN OVERSIGHT

(2) Services provided when a physician has otherwise diagnosed an individual with a disorder of sex development and determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(3) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking drugs regardless of whether the surgery was performed or the hormones or drugs were prescribed or administered in accordance with state and federal law; or

(4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of a major bodily function unless surgery is performed.

208.152. 1. MO HealthNet payments shall be made on behalf of those eligible needy persons as described in section 208.151 who are unable to provide for it in whole or in part, with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the MO HealthNet division, unless otherwise hereinafter provided, for the following:

(1) Inpatient hospital services, except to persons in an institution for mental diseases who are under the age of sixty-five years and over the age of twenty-one years; provided that the MO HealthNet division shall provide through rule and regulation an exception process for

AMERICAN OVERSIGHT

coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile professional activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay schedule; and provided further that the MO HealthNet division shall take into account through its payment system for hospital services the situation of hospitals which serve a disproportionate number of low-income patients;

(2) All outpatient hospital services, payments therefor to be in amounts which represent no more than eighty percent of the lesser of reasonable costs or customary charges for such services, determined in accordance with the principles set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. Section 301, et seq.), but the MO HealthNet division may evaluate outpatient hospital services rendered under this section and deny payment for services which are determined by the MO HealthNet division not to be medically necessary, in accordance with federal law and regulations;

(3) Laboratory and X-ray services;

(4) Nursing home services for participants, except to persons with more than five hundred thousand dollars equity in their home or except for persons in an institution for mental diseases who are under the age of sixty-five years, when residing in a hospital licensed by the department of health and senior services or a nursing home licensed by the department of health and senior services or appropriate licensing authority of other states or government-owned and -operated institutions which are determined to conform to standards equivalent to licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. Section 301,

AMERICAN OVERSIGHT

et seq.), as amended, for nursing facilities. The MO HealthNet division may recognize through its payment methodology for nursing facilities those nursing facilities which serve a high volume of MO HealthNet patients. The MO HealthNet division when determining the amount of the benefit payments to be made on behalf of persons under the age of twenty-one in a nursing facility may consider nursing facilities furnishing care to persons under the age of twenty-one as a classification separate from other nursing facilities;

(5) Nursing home costs for participants receiving benefit payments under subdivision (4) of this subsection for those days, which shall not exceed twelve per any period of six consecutive months, during which the participant is on a temporary leave of absence from the hospital or nursing home, provided that no such participant shall be allowed a temporary leave of absence unless it is specifically provided for in his plan of care. As used in this subdivision, the term "temporary leave of absence" shall include all periods of time during which a participant is away from the hospital or nursing home overnight because he is visiting a friend or relative;

(6) Physicians' services, whether furnished in the office, home, hospital, nursing home, or elsewhere;

(7) Subject to appropriation, up to twenty visits per year for services limited to examinations, diagnoses, adjustments, and manipulations and treatments of malpositioned articulations and structures of the body provided by licensed chiropractic physicians practicing within their scope of practice. Nothing in this subdivision shall be interpreted to otherwise expand MO HealthNet services;

AMERICAN OVERSIGHT

(8) Drugs and medicines when prescribed by a licensed physician, dentist, podiatrist, or an advanced practice registered nurse; except that no payment for drugs and medicines prescribed on and after January 1, 2006, by a licensed physician, dentist, podiatrist, or an advanced practice registered nurse may be made on behalf of any person who qualifies for prescription drug coverage under the provisions of P.L. 108-173;

(9) Emergency ambulance services and, effective January 1, 1990, medically necessary transportation to scheduled, physician-prescribed nonelective treatments;

(10) Early and periodic screening and diagnosis of individuals who are under the age of twenty-one to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Such services shall be provided in accordance with the provisions of Section 6403 of P.L. 101-239 and federal regulations promulgated thereunder;

(11) Home health care services;

(12) Family planning as defined by federal rules and regulations; provided, however, that such family planning services shall not include abortions or any abortifacient drug or device that is used for the purpose of inducing an abortion unless such abortions are certified in writing by a physician to the MO HealthNet agency that, in the physician's professional judgment, the life of the mother would be endangered if the fetus were carried to term;

(13) Inpatient psychiatric hospital services for individuals under age twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C. Section 1396d, et seq.);

AMERICAN OVERSIGHT

(14) Outpatient surgical procedures, including presurgical diagnostic services performed in ambulatory surgical facilities which are licensed by the department of health and senior services of the state of Missouri; except, that such outpatient surgical services shall not include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended, if exclusion of such persons is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended;

(15) Personal care services which are medically oriented tasks having to do with a person's physical requirements, as opposed to housekeeping requirements, which enable a person to be treated by his or her physician on an outpatient rather than on an inpatient or residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal care services shall be rendered by an individual not a member of the participant's family who is qualified to provide such services where the services are prescribed by a physician in accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible to receive personal care services shall be those persons who would otherwise require placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable for personal care services shall not exceed for any one participant one hundred percent of the average statewide charge for care and treatment in an intermediate care facility for a comparable period of time. Such services, when delivered in a residential care facility or assisted living facility licensed under chapter 198 shall be authorized on a tier level based on the services the resident requires and the frequency of the services. A

AMERICAN OVERSIGHT

resident of such facility who qualifies for assistance under section 208.030 shall, at a minimum, if prescribed by a physician, qualify for the tier level with the fewest services. The rate paid to providers for each tier of service shall be set subject to appropriations. Subject to appropriations, each resident of such facility who qualifies for assistance under section 208.030 and meets the level of care required in this section shall, at a minimum, if prescribed by a physician, be authorized up to one hour of personal care services per day. Authorized units of personal care services shall not be reduced or tier level lowered unless an order approving such reduction or lowering is obtained from the resident's personal physician. Such authorized units of personal care services or tier level shall be transferred with such resident if he or she transfers to another such facility. Such provision shall terminate upon receipt of relevant waivers from the federal Department of Health and Human Services. If the Centers for Medicare and Medicaid Services determines that such provision does not comply with the state plan, this provision shall be null and void. The MO HealthNet division shall notify the revisor of statutes as to whether the relevant waivers are approved or a determination of noncompliance is made;

(16) Mental health services. The state plan for providing medical assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 301, as amended, shall include the following mental health services when such services are provided by community mental health facilities operated by the department of mental health or designated by the department of mental health as a community mental health facility or as an alcohol and drug abuse facility or as a

AMERICAN OVERSIGHT

child-serving agency within the comprehensive children's mental health service system established in section 630.097. The department of mental health shall establish by administrative rule the definition and criteria for designation as a community mental health facility and for designation as an alcohol and drug abuse facility. Such mental health services shall include:

(a) Outpatient mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

(b) Clinic mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

(c) Rehabilitative mental health and alcohol and drug abuse services including home and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health or alcohol and drug abuse professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management. As used in this

AMERICAN OVERSIGHT

section, mental health professional and alcohol and drug abuse professional shall be defined by the department of mental health pursuant to duly promulgated rules. With respect to services established by this subdivision, the department of social services, MO HealthNet division, shall enter into an agreement with the department of mental health. Matching funds for outpatient mental health services, clinic mental health services, and rehabilitation services for mental health and alcohol and drug abuse shall be certified by the department of mental health to the MO HealthNet division. The agreement shall establish a mechanism for the joint implementation of the provisions of this subdivision. In addition, the agreement shall establish a mechanism by which rates for services may be jointly developed;

(17) Such additional services as defined by the MO HealthNet division to be furnished under waivers of federal statutory requirements as provided for and authorized by the federal Social Security Act (42 U.S.C. Section 301, et seq.) subject to appropriation by the general assembly;

(18) The services of an advanced practice registered nurse with a collaborative practice agreement to the extent that such services are provided in accordance with chapters 334 and 335, and regulations promulgated thereunder;

(19) Nursing home costs for participants receiving benefit payments under subdivision (4) of this subsection to reserve a bed for the participant in the nursing home during the time that the participant is absent due to admission to a hospital for services which cannot be performed on an outpatient basis, subject to the provisions of this subdivision:

AMERICAN OVERSIGHT

(a) The provisions of this subdivision shall apply only if:

a. The occupancy rate of the nursing home is at or above ninety-seven percent of MO HealthNet certified licensed beds, according to the most recent quarterly census provided to the department of health and senior services which was taken prior to when the participant is admitted to the hospital; and

b. The patient is admitted to a hospital for a medical condition with an anticipated stay of three days or less;

(b) The payment to be made under this subdivision shall be provided for a maximum of three days per hospital stay;

(c) For each day that nursing home costs are paid on behalf of a participant under this subdivision during any period of six consecutive months such participant shall, during the same period of six consecutive months, be ineligible for payment of nursing home costs of two otherwise available temporary leave of absence days provided under subdivision (5) of this subsection; and

(d) The provisions of this subdivision shall not apply unless the nursing home receives notice from the participant or the participant's responsible party that the participant intends to return to the nursing home following the hospital stay. If the nursing home receives such notification and all other provisions of this subsection have been satisfied, the nursing home shall provide notice to the participant or the participant's responsible party prior to release of the reserved bed;

(20) Prescribed medically necessary durable medical equipment. An electronic web-based prior authorization system using best medical evidence and care and treatment

AMERICAN OVERSIGHT

guidelines consistent with national standards shall be used to verify medical need;

(21) Hospice care. As used in this subdivision, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social, and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO HealthNet division to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

(22) Prescribed medically necessary dental services. Such services shall be subject to appropriations. An electronic web-based prior authorization system using best medical evidence and care and treatment guidelines consistent with national standards shall be used to verify medical need;

(23) Prescribed medically necessary optometric services. Such services shall be subject to appropriations. An electronic web-based prior authorization system using best medical evidence and care and treatment

AMERICAN OVERSIGHT

guidelines consistent with national standards shall be used to verify medical need;

(24) Blood clotting products-related services. For persons diagnosed with a bleeding disorder, as defined in section 338.400, reliant on blood clotting products, as defined in section 338.400, such services include:

(a) Home delivery of blood clotting products and ancillary infusion equipment and supplies, including the emergency deliveries of the product when medically necessary;

(b) Medically necessary ancillary infusion equipment and supplies required to administer the blood clotting products; and

(c) Assessments conducted in the participant's home by a pharmacist, nurse, or local home health care agency trained in bleeding disorders when deemed necessary by the participant's treating physician;

(25) The MO HealthNet division shall, by January 1, 2008, and annually thereafter, report the status of MO HealthNet provider reimbursement rates as compared to one hundred percent of the Medicare reimbursement rates and compared to the average dental reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve parity with Medicare reimbursement rates and for third-party payor average dental reimbursement rates. Such plan shall be subject to appropriation and the division shall include in its annual budget request to the governor the necessary funding needed to complete the four-year plan developed under this subdivision.

2. Additional benefit payments for medical assistance shall be made on behalf of those eligible needy children,

AMERICAN OVERSIGHT

pregnant women and blind persons with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the MO HealthNet division, unless otherwise hereinafter provided, for the following:

(1) Dental services;

(2) Services of podiatrists as defined in section 330.010;

(3) Optometric services as described in section 336.010;

(4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing aids, and wheelchairs;

(5) Hospice care. As used in this subdivision, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social, and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO HealthNet division to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

AMERICAN OVERSIGHT

(6) Comprehensive day rehabilitation services beginning early posttrauma as part of a coordinated system of care for individuals with disabling impairments. Rehabilitation services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan developed, implemented, and monitored through an interdisciplinary assessment designed to restore an individual to optimal level of physical, cognitive, and behavioral function. The MO HealthNet division shall establish by administrative rule the definition and criteria for designation of a comprehensive day rehabilitation service facility, benefit limitations and payment mechanism. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this subdivision shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

3. The MO HealthNet division may require any participant receiving MO HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after July 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all covered services except for those services covered under subdivisions (15) and (16) of subsection 1 of this section and sections 208.631 to 208.657 to the extent and in the

AMERICAN OVERSIGHT

manner authorized by Title XIX of the federal Social Security Act (42 U.S.C. Section 1396, et seq.) and regulations thereunder. When substitution of a generic drug is permitted by the prescriber according to section 338.056, and a generic drug is substituted for a name-brand drug, the MO HealthNet division may not lower or delete the requirement to make a co-payment pursuant to regulations of Title XIX of the federal Social Security Act. A provider of goods or services described under this section must collect from all participants the additional payment that may be required by the MO HealthNet division under authority granted herein, if the division exercises that authority, to remain eligible as a provider. Any payments made by participants under this section shall be in addition to and not in lieu of payments made by the state for goods or services described herein except the participant portion of the pharmacy professional dispensing fee shall be in addition to and not in lieu of payments to pharmacists. A provider may collect the co-payment at the time a service is provided or at a later date. A provider shall not refuse to provide a service if a participant is unable to pay a required payment. If it is the routine business practice of a provider to terminate future services to an individual with an unclaimed debt, the provider may include uncollected co-payments under this practice. Providers who elect not to undertake the provision of services based on a history of bad debt shall give participants advance notice and a reasonable opportunity for payment. A provider, representative, employee, independent contractor, or agent of a pharmaceutical manufacturer shall not make co-payment for a participant. This subsection shall not apply to other qualified children, pregnant women, or blind persons. If

AMERICAN OVERSIGHT

the Centers for Medicare and Medicaid Services does not approve the MO HealthNet state plan amendment submitted by the department of social services that would allow a provider to deny future services to an individual with uncollected co-payments, the denial of services shall not be allowed. The department of social services shall inform providers regarding the acceptability of denying services as the result of unpaid co-payments.

4. The MO HealthNet division shall have the right to collect medication samples from participants in order to maintain program integrity.

5. Reimbursement for obstetrical and pediatric services under subdivision (6) of subsection 1 of this section shall be timely and sufficient to enlist enough health care providers so that care and services are available under the state plan for MO HealthNet benefits at least to the extent that such care and services are available to the general population in the geographic area, as required under subparagraph (a)(30)(A) of 42 U.S.C. Section 1396a and federal regulations promulgated thereunder.

6. Beginning July 1, 1990, reimbursement for services rendered in federally funded health centers shall be in accordance with the provisions of subsection 6402(c) and Section 6404 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations promulgated thereunder.

7. Beginning July 1, 1990, the department of social services shall provide notification and referral of children below age five, and pregnant, breast-feeding, or postpartum women who are determined to be eligible for MO HealthNet benefits under section 208.151 to the special supplemental food programs for women, infants and children administered by the department of health and senior services. Such

AMERICAN OVERSIGHT

notification and referral shall conform to the requirements of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

8. Providers of long-term care services shall be reimbursed for their costs in accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. Section 1396a, as amended, and regulations promulgated thereunder.

9. Reimbursement rates to long-term care providers with respect to a total change in ownership, at arm's length, for any facility previously licensed and certified for participation in the MO HealthNet program shall not increase payments in excess of the increase that would result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. Section 1396a (a)(13)(C).

10. The MO HealthNet division may enroll qualified residential care facilities and assisted living facilities, as defined in chapter 198, as MO HealthNet personal care providers.

11. Any income earned by individuals eligible for certified extended employment at a sheltered workshop under chapter 178 shall not be considered as income for purposes of determining eligibility under this section.

12. If the Missouri Medicaid audit and compliance unit changes any interpretation or application of the requirements for reimbursement for MO HealthNet services from the interpretation or application that has been applied previously by the state in any audit of a MO HealthNet provider, the Missouri Medicaid audit and compliance unit shall notify all affected MO HealthNet providers five business days before such change shall take effect. Failure of the Missouri Medicaid audit and compliance unit to notify

AMERICAN OVERSIGHT

a provider of such change shall entitle the provider to continue to receive and retain reimbursement until such notification is provided and shall waive any liability of such provider for recoupment or other loss of any payments previously made prior to the five business days after such notice has been sent. Each provider shall provide the Missouri Medicaid audit and compliance unit a valid email address and shall agree to receive communications electronically. The notification required under this section shall be delivered in writing by the United States Postal Service or electronic mail to each provider.

13. Nothing in this section shall be construed to abrogate or limit the department's statutory requirement to promulgate rules under chapter 536.

14. Beginning July 1, 2016, and subject to appropriations, providers of behavioral, social, and psychophysiological services for the prevention, treatment, or management of physical health problems shall be reimbursed utilizing the behavior assessment and intervention reimbursement codes 96150 to 96154 or their successor codes under the Current Procedural Terminology (CPT) coding system. Providers eligible for such reimbursement shall include psychologists.

15. There shall be no payments made under this section for gender transition surgeries, cross-sex hormones, or puberty-blocking drugs, as such terms are defined in section 191.1720, for the purpose of a gender transition.

217.230. The director shall arrange for necessary health care services for offenders confined in correctional centers, **which shall not include any gender transition surgery, as defined in section 191.1720.**

AMERICAN OVERSIGHT

221.120. 1. If any prisoner confined in the county jail is sick and in the judgment of the jailer, requires the attention of a physician, dental care, or medicine, the jailer shall procure the necessary medicine, dental care or medical attention necessary or proper to maintain the health of the prisoner; **provided, that this shall not include any gender transition surgery, as defined in section 191.1720.** The costs of such medicine, dental care, or medical attention shall be paid by the prisoner through any health insurance policy as defined in subsection 3 of this section, from which the prisoner is eligible to receive benefits. If the prisoner is not eligible for such health insurance benefits then the prisoner shall be liable for the payment of such medical attention, dental care, or medicine, and the assets of such prisoner may be subject to levy and execution under court order to satisfy such expenses in accordance with the provisions of section 221.070, and any other applicable law. The county commission of the county may at times authorize payment of certain medical costs that the county commission determines to be necessary and reasonable. As used in this section, the term "medical costs" includes the actual costs of medicine, dental care or other medical attention and necessary costs associated with such medical care such as transportation, guards and inpatient care.

2. The county commission may, in their discretion, employ a physician by the year, to attend such prisoners, and make such reasonable charge for his service and medicine, when required, to be taxed and collected as provided by law.

3. As used in this section, the following terms mean:

AMERICAN OVERSIGHT

(1) "Assets", property, tangible or intangible, real or personal, belonging to or due a prisoner or a former prisoner, including income or payments to such prisoner from Social Security, workers' compensation, veterans' compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, compensation paid to the prisoner per work or services performed while a prisoner or from any other source whatsoever, including any of the following:

(a) Money or other tangible assets received by the prisoner as a result of a settlement of a claim against the state, any agency thereof, or any claim against an employee or independent contractor arising from and in the scope of the employee's or contractor's official duties on behalf of the state or any agency thereof;

(b) A money judgment received by the prisoner from the state as a result of a civil action in which the state, an agency thereof or any state employee or independent contractor where such judgment arose from a claim arising from the conduct of official duties on behalf of the state by the employee or subcontractor or for any agency of the state;

(c) A current stream of income from any source whatsoever, including a salary, wages, disability benefits, retirement benefits, pension benefits, insurance or annuity benefits, or similar payments; and

(2) "Health insurance policy", any group insurance policy providing coverage on an expense-incurred basis, any group service or indemnity contract issued by a not-for-profit health services corporation or any self-insured group health benefit plan of any type or description.

✓

AMERICAN OVERSIGHT



CAMPAIGN

LIFE

MISSOURI

AMERICAN OVERSIGHT

P.O. Box 142585 • St. Louis, MO 63114-0585

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (20-R001)

Subject

Referendum petition from Sara Baker regarding Senate Substitute for Senate Committee Substitute for House Bill No. 126. (Received May 28, 2019)

Date

June 17, 2019

Description

Voters will approve or reject this statutory change.

The referendum is to be voted on in November 2020.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education,** the **Department of Health and Senior Services,** the **Department of Insurance, Financial Institutions and Professional Registration,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, St. Louis Community College,** and **Missouri Life Sciences Research Board.**

AMERICAN OVERSIGHT

Judy Morgan, District 24, Ingrid Burnett, District 19, and Donna Baringer, District 82, members of the Missouri House of Representatives Fiscal Review Committee provided information to the State Auditor's office.

Sarah Nesbitt, Washington University graduate and 240 graduates of Missouri institutions of higher education provided information to the State Auditor's office.

Mark R. Reading and Bret Fischer provided information to the State Auditor's office.

Kip Kendrick, State Representative, District 45, Ranking Member House Budget Committee provided information to the State Auditor's office.

Sarah W. Martin, 11th Ward Alderwoman, Lyda Krewson, Mayor, Annie Rice, 8th Ward Alderwoman, Dan Guenther, 9th Ward Alderman, Larry Arnowitz, 12th Ward Alderman, Cara Spencer, 20th Ward Alderwoman, Bret Narayan, 24th Ward Alderman, Shane Cohn, 25th Ward Alderman, and Heather Navarro, 28th Ward Alderwoman from City of St. Louis provided information to the State Auditor's office.

Assumptions

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated this legislation does not impact their department.

Officials from the **Department of Higher Education** indicated they report no fiscal impact for HB 126 as Truly Agreed and Finally Passed (TAFP).

Officials from the **Department of Health and Senior Services** indicated this referendum has no impact.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Labor and Industrial Relations** indicated initiative petition 20-R001 does not appear to have a fiscal impact on their department.

Officials from the **Department of Revenue** indicated their department has no impact for this fiscal note.

Officials from the **Department of Public Safety - Office of the Director** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this referendum petition.

Officials from the **Governor's office** indicated there should be no added costs or savings to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated no adverse fiscal impact to their department would be expected as a result of the proposal.

Officials from the **Department of Transportation** indicated this referendum petition would have no impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated the referendum petition would put the provisions of HB 126 to a vote of the people in the November 2020 general election.

HB 126 provides that for all tax years beginning on or after January 1, 2021, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal to 70% of the amount such taxpayer contributed to a pregnancy resource center, an increase from the 50% previously allowed. The fiscal note for HB 126 estimates that this increase will result in a loss to General Revenue that could exceed $1.4 million annually beginning in Fiscal Year 2022.

HB 126 removes the December 31, 2024 sunset on the pregnancy resource center tax credit. The fiscal note for HB 126 estimates that the removal of the sunset will result in a loss to General Revenue that could exceed $4.9 million annually beginning in Fiscal Year 2026.

HB 126 expands the definition of pregnancy resource center to include facilities that offer services under the Alternatives to Abortion Program. It also removes the cap on the pregnancy resource tax credit for all fiscal years beginning on or after July 1, 2021. The fiscal note for HB 126 notes that these provisions, as well as the increased tax credit percentage, could increase utilization of the pregnancy resource center tax credit by an unknown amount.

AMERICAN OVERSIGHT

Therefore, because HB 126 is estimated to reduce General Revenue by an amount that could exceed $4.9 million once the provisions are fully implemented in Fiscal Year 2026, if HB 126 were repealed there could be a positive impact to General Revenue that could exceed $4.9 million.

This should not impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Office of the State Public Defender** indicated Referendum Petition 20-R001 "Abortion" will have an unknown but significant fiscal impact on the State Public Defender System. Referendum Petition 20-R002 creates a new Class B felony for "any person who knowingly . . . induces an abortion of an unborn child . . . ," which arguably would include post-conception contraception. If so, this would result in the prosecution of an unknown but significant number of indigent women throughout the state which would require representation by the State Public Defender System for the purpose of the referendum petition and as a result of excessive caseloads, their office CANNOT assume existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of knowingly performing or inducing an abortion of an unborn child. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. Their office will continue to request sufficient appropriations to provide competent and effective representation in all criminal cases where the right to counsel attaches.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this referendum petition.

Officials from the **City of Kansas City** indicated they cannot appreciate or ascertain any reasonable estimate of direct fiscal impact.

Officials from the **City of St. Louis** indicated their local government estimates the fiscal impact of the bill for fiscal years 2020, 2021 and 2022 to be as follows:

In their city, ensuring access to high-quality family planning and reproductive health services for all women, especially those who are uninsured or underinsured, is critical to improving health outcomes for the St. Louis region. Planned Parenthood and Federally Qualified Health Centers (FQHC) in their city serve as safety nets for the aforementioned population. FQHCs provide comprehensive services, which include, but are not limited to: women' s health (obstetrics/gynecology, family planning, pregnancy testing, childbirth classes), pediatrics and teens, immunizations, adult medical services, sexually transmitted

AMERICAN OVERSIGHT

infections testing (including HIV) and treatment, dental, lead screening and treatment, and diabetes and nutrition education classes.

Planned Parenthood offers a variety of family planning, cancer prevention, and comprehensive reproductive health services, which include but are not limited to: annual gynecological exams, cervical cancer screenings, birth control, breast exams, STI testing and treatment, abortion care, emergency contraception, pregnancy tests, HPV vaccinations, urinary tract infection treatment, and vasectomies. If Planned Parenthood is no longer able to provide comprehensive reproductive and family planning services, this will create a critical gap in the St. Louis region' s local public health system infrastructure, which will increase the vulnerability of economically disenfranchised populations who bear the highest burden of poor health outcomes (e.g., maternal mortality, infant mortality, chronic diseases). In addition, this will have a dire fiscal impact on other components of the health system, which will have to absorb the direct and indirect costs of obstetric care and postpartum care for the underinsured, uninsured, and for persons with public insurance (e.g., Gateway for Better Health, Medicaid).

According to recent data, the cost of having a baby in the St. Louis area ranges from $4,668 - $15,607. This range does not include delivery, indirect costs, or other special circumstances that may require additional resources or more specialized medical care. This is a cost that will be paid by hospital systems. In total, the increased costs of full-term OB care, postpartum care, and related administrative costs may exceed $7 million annually.

In addition, the safety net of reproductive care for women with limited means is fragile. If the largest provider of reproductive health care in St. Louis is unable to financially continue to be a cornerstone in the delivery of access to care, the cost in replacing the current reproductive care would be $37 million in direct care costs with an additional $8 million in increased administration costs.

One of the essential services of public health is the assurance that access to care is provided in the regions within the city's authority. The threat of massive disruptions to the delivery of care in the region to potentially vulnerable residents is significant.

They affirm the potential threat of disruption in Medicaid funding that could result from not complying with federal legislation that pledges access to comprehensive reproductive health services. In the past, their city has been penalized by federal agencies for maintaining state legislation that does not conform to minimum standards established by the federal government. Medicaid funding continues to be the glue that holds together the foundational structure for access to care. The impact of losing Medicaid funding will be calamitous to the St. Louis region' s local public health system, and the lives of St. Louis residents and visitors.

AMERICAN OVERSIGHT

Convention and Tourism

Their city has already had one Convention cancel for 2024 due to the passage of HB 126. The summarized data is as follows.

American Society for Engineering Education
Annual Conference & Exposition
Dates: June 15-18, 2024
Attendees: 4,500
Peak/Total Room Nights: 1,700/6,842
Direct Spend Economic Impact: $4.87 million

The speed at which this cancelation came through is indicative that the Convention Business would lose 3 to 4 conventions a year. The American Society for Engineering Education is representative of many of the Conventions that will be booked.

Over the next three years, at a minimum, it is expected that the loss of 3 Conventions a year will result in a $14.61 million dollar loss of economic activity each year in their city.

Loss of Students' Spending while attending our Universities

Information provided by Washington University indicates that their average student spends approximately $81,000 each, which is the impact on the local economy. If both major Universities lose conservatively 100 applicants in each of the next 3 years (200 for 1 year, 200 for 2 years, and 200 for 3 years), the amount of loss local economic activity would be $97,000,000.

Officials from **Wellsville-Middletown R-1 School District** indicated any bill that impacts the ability to provide health-related services to women including contraception, family planning, pre & post-natal services and yes, medically safe abortions, will have a long term fiscal impact on all state services.

Officials from **Metropolitan Community College** indicated no anticipated fiscal impact for their college.

Judy Morgan, District 24, Ingrid Burnett, District 19, and Donna Baringer, District 82, members of the Missouri House of Representatives Fiscal Review Committee provided the following information:

AMERICAN OVERSIGHT

Nicole Galloway, CPA
Missouri State Auditor
Capitol Office
State Capitol, Rm 121
Jefferson City, MO 65101

June 7, 2019

Dear Auditor Galloway,

As members of the Fiscal Review Committee of the Missouri House of Representatives, we are writing in regard to House Bill No. 126, which was passed by the Missouri legislature on May 17, 2019. Specifically, we would like to address the fiscal implications of House Bill No. 126.

First, in the first sentence of paragraph one of the fiscal analysis dated May 16, 2019 (page 3), Oversight noted, "Due to time constraints of less than 1 hour, Oversight was unable to receive some of the agency responses in a timely manner and performed limited analysis." It is quite disconcerting that the Missouri legislature passed House Bill No. 126 when Oversight clearly did not have the time to adequately analyze the fiscal implications of said bill. We consider spending taxpayer dollars with "limited analysis" of its fiscal implications as irresponsible and foolish.

Second, the truly agreed to and finally passed version of House Bill No. 126 made significant changes to the tax credits for pregnancy resource centers. Currently the program has a $2.5 million cap, which will expand to $3.5 million on July 1, 2019, contains a sunset clause of December 31, 2024, and awards taxpayers up to a 50% tax credit for contributions they make to pregnancy resource centers.

House Bill No. 126 removes both the cap and the sunset for pregnancy resource centers and increases the amount of the tax credit awarded to taxpayers from 50 percent to 70 percent of their contributions to such centers. Listed below are relevant statements from the fiscal analysis in regard to the changes in the tax credits for pregnancy resource centers.

- "Also, if the amount of tax credits redeemed in a fiscal year is less than the cumulative amount, the difference shall be carried over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax credits that may be authorized in that fiscal year or years. Therefore, adding unused credits from the previous year(s), the cap in any given year past FY 2019 could well exceed $3.5 million." (Page 3)
- "Oversight notes this proposal allows facilities that offer services under the Alternatives to Abortion program to qualify for the pregnancy resource center. Oversight assumes this could expand the number of pregnancy resource centers that are eligible to distribute this tax credit." (Page 4)
- "Oversight notes that starting January 1, 2021 (FY 2021) this proposal increases the amount of the credit from 50 percent of the contribution to 70 percent of the contribution. Increasing the tax credit amount could encourage additional taxpayers to participate in the program." (Page 4)

AMERICAN OVERSIGHT

- "Oversight notes with the combination of;

    - expanding the definition of pregnancy resource centers;
    - increasing the percentage of the credit; and
    - removing the cap

    would increase the utilization of the credit and Oversight will show all impacts as Could exceed the estimates provided above." (Page 4)

From a fiscal perspective, we are very concerned about the changes House Bill No. 126 stipulated in regard to pregnancy resource centers – from lifting the cap and sunset to increasing the tax credit from 50 percent to 70 percent for contributions. As the fiscal analysis noted with such broad ranging parameters, all the estimates for the cost of implementing these changes are listed in the "Could exceed" range of dollars. Although the fiscal analysis estimated the cost at (Could exceed $1.4 million) in FY 22 and (Could exceed $4.9 million) in FY 26, we are basically working in the dark. Since the amounts are listed as "Could exceed," we actually do not know how much the state coffers will lose based on these changes.

In addition sunsets serve a useful purpose in that the program comes back to the legislature for review automatically on a periodic basis. Removing the sunset means that the legislature will never again look at the tax credit program for pregnancy resource centers.

Third, under current federal law known as the Hyde Amendment, Medicaid is only required to pay for abortions in the cases of rape, incest, or threat to the life of the mother. The fiscal analysis noted, ". . .officials from the Department of Social Services (DSS) stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother." (Page 5)

Oversight documented that Missouri was directed by the United States District Court in 1994 to comply with the requirements of the Hyde Amendment. (Page 6) Furthermore, the fiscal analysis stated, "Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown. Oversight noted in response to House Bill No. 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds." (Page 6)

Therefore, implementation of House Bill No. 126 could result in our state losing the federal dollars we receive for MO HealthNet. According to the fiscal analysis, that amount for Fiscal Year 2019 was over $7.2 billion. (Page 6) Implementing a law that would put the disabled, mentally ill, pregnant women, and children at risk of losing their MO HealthNet coverage is unconscionable.

Fourth, the fiscal analysis noted, "This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide

AMERICAN OVERSIGHT

services to MO HealthNet recipients through these health care providers." (Page 14) Losing the $7.2 billion in federal dollars would also hurt our medical care providers.

We consider House Bill No. 126 as an unconstitutional piece of legislation based on its substance. In addition, Oversight was not provided an adequate amount of time to prepare the fiscal analysis and many uncertainties exist in regard to the fiscal impact House Bill No. 126 will have on our state budget. In closing, thank you for your consideration of this important matter affecting Missouri citizens.

Sincerely,

Judy Morgan
Missouri State Representative
District 24

Ingrid Burnett
Missouri State Representative
District 19

Donna M.C. Baringer
Missouri State Representative
District 82

.

AMERICAN OVERSIGHT

Sarah Nesbitt, Washington University graduate and 240 graduates of Missouri institutions of higher education provided the following information:

AMERICAN OVERSIGHT

Nicole Galloway
Missouri State Auditor
State Auditor's Office, P.O. Box 869
Jefferson City, MO 65102

Dear Auditor Galloway,

As students and alumni of Missouri institutions of higher education, we write to voice our concerns about the harm the implementation of HB 126 would have on the state of Missouri. We write together, as both alumni and current students, deeply concerned about the future of our educational institutions and their ability to thrive should HB 126 go into effect. As you make your assessment of the financial risk posed to our state by this law, we encourage you to note the significant financial consequences of our objection.

None of us would choose to attend college in a state that effectively bans abortion, as this violates both our own autonomy and that of our peers. None of us would choose to further our education in an atmosphere that threatens to criminalize professionals who perform abortion, because we trust our peers who study medicine and our neighbors who practice it. They strive to provide scientifically accurate information and patient-centered care, and we oppose any effort to eclipse those standards.

If Missouri's voters fail to repeal HB 126, we will be forced to withhold support of both state and private educational institutions who have been complicit – including through silence – in its implementation. We encourage you, as Missouri's Auditor, to view each of the undersigned as a potential economic loss to Missouri. In tuition dollars alone, each of us represents tens of thousands of dollars in revenue for Missouri educational institutions annually, and the impact of the loss of our talents, our innovation, and our drive is immeasurable. Even beyond the loss of tuition dollars, taxes, and legal expenses, this measure could cost the state all of its Medicaid funding, $7.2B that provides lifesaving care to Missourians in need.

Preventing Missourians from accessing abortion after eight weeks, before some of them even know they are pregnant, is unconstitutional, dangerous, and a violation of Missourians' individual freedoms; this kind of bar on access to reproductive healthcare only hurts the communities that many of us hold dear. Given the state coffers devoted to defending this unconstitutional measure, and given the number of students that will be deterred from coming to, staying in, or returning to Missouri, the financial consequences of implementig HB 126 are both tangible and substantial. We know the human cost will be far greater.

We believe that with smart policies that leave healthcare decisions to professionals and their patients, Missouri can thrive; HB 126 is just the opposite.

We call on the auditor to understand the potential cost the loss of Missouri's students will have on Missouri, and we call on our universities to echo our concerns by submitting their own fiscal analysis of referendum 2020-2001 to the auditor by Friday, June 7th.

AMERICAN OVERSIGHT

Sincerely,

Sarah Nesbitt
Washington University in St. Louis
Class of 2017

And the Undersigned 240 graduates of more than ten different Missouri institutions of higher education:

Elaine Emmerich	Washington University in St. Louis	Class of 2017
Julia Curbera	Washington University in St. Louis	Class of 2017
Chloe Ames	Washington University in St. Louis	Class of 2017
Nicholas Okafor	Washington University of St. Louis	Class of 2016
Madeline Stewart	Washington University in St. Louis	Class of 2018
Lemoine Joseph	Washington University in St. Louis	Class of 2016
Carly Herbert	Washington University in St Louis	Class of 2017
Savannah rush	Washington university in st louis	Class of 2018
Katelyn Moeder	Washington University in St. Louis	Class of 2017
Fatima	Washington University in St. Louis	Class of 2020
Cameron Kinker	Washington University in St. Louis	Class of 2016
Brianna McCain	Washington University in St. Louis	Class of 2016
David Graham	Washington University in St. Louis	Class of 2018
Talia Weseley	Washington University in St. Louis	Class of 2019
Julie Merrell	Washington University in St. Louis	Class of 2018
Claire Thomas	Washington University in St. Louis	Class of 2018
Jessica Klugman	Washington University	Class of 2017
Mary Prothero	Washington University in St. Louis	Class of 2015
Charles Bosco	Washington University in St. Louis	Class of 2021
Sarah Felts	Truman State University & University of Missouri School of Law	Class of 2009 & Class of 2012
Elayna Levin	Washington University in St. Louis	Class of 2017
Ishaan Shah	Washington University in St. Louis	Class of 2020
Natalie Johnson	Washington University in St. Louis	Class of 2017
Bonnie Simonoff	Washington University in St. Louis	Class of 2019
Jonah Klein-Barton	Washington University in St Louis	Class of 2018

AMERICAN OVERSIGHT

Emily Brown	Washington University in St Louis	Class of 2016
Pia Marcus	Washington University in St Louis	Class of 2013
Julia Kaplan	Washington university in St. Louis	Class of 2012
Maya Mashkovich	Washington University in St. Louis	Class of 2018
Daniela Pedraza	Saint Louis University	Class of 2017
Valerie Hirschberg	Washington University In St. Louis / Harvard University	Class of 2018 and 2020
Brooke Nosratian	Washington University in St. Louis	Class of 2018
Ryan Paige	Washington University in St. Louis	Class of 2017
John Drollinger	Washington University in St. Louis	Class of 2012
Kirk Brown	Washington University in St. Louis	Class of 2020
Michael Gjelsten	Washington University in St. Louis	Class of 2017
Sarah Martin	Washington university in St. Louis	December 2019
Emilia Epstein	Washington University in St. Louis	Class of 2018
Rebecca Naegele	Washington University in St. Louis	Class of 2012
Nathaniel Thomas	Washington University in St. Louis	Class of 2017
Sophie Abo	Washington university in St. Louis	Class of 2019
Mary Ellis	Washington University in St. Louis	Class of 2019
Rachel Bridge	Washington University in St. Louis	Class of 2015
Laken Sylvander	Washington University in St. Louis	Class of 2017
Jessmehar Walia	Washington University in St. Louis	Class of 2017
Anna Poger	Washington University	Class of 1993
Linda Gilbreath	Washington University in St Louis	Class of 2018
Jennifer Box	University of Missouri	Class of 2004
Lisa Beal	Stephens College	Class of 2010
Elyse Max	University of Missouri- Kansas City	Class of 2006
Lauren Hucko	Washington University in St. Louis	Class of 2020
Ashley Kuykendall	Truman State University & Brown School of Social Work at Washington University	Class of 2016, Class of 2019
Carla Max	University of Missouri Columbia	Class of 1971
Archna Calfee MD	Washington University in St Louis	Class of 2001
Sara Goellner	Washington University in St Louis	Class of 1999
Matt Mitchell	University of Missouri Kansas City	Class of 2010
Elisabeth Condon	Truman State University	Class of 2018

AMERICAN OVERSIGHT

Keaton Wetzel	Washington University in St. Louis	Class of 2015
Carlos Sedillo	Truman State University	Class of 2018
Julia Widmann	Washington University in St. Louis	Class of 2018
Marissa Rosen	Washington University in St. Louis	Class of 1998, Class of 2000
Elizabeth K Small	University of Missouri Kansas City	Class of 1978
Amy Soper	Washington University in St. Louis	Class of 2019
Paula Gerber	Washington University School of Medicine	Class of 2001
Nathan Greenberg	Washington University in St. Louis	Class of 2017
Callie Schneider	Washington University in St. Louis	Class of 2016
Sarah Hilderbrand	University of Missouri	Class of 2010
Jaydee Lee	Washington University in St. Louis	Class of 2017
Jacqueline Oestreicher	Washington University in St. Louis	Class of 2018
Martin Elliott	Washington University in St. Louis	Class of 2016
Blake Buthod	Truman State University	Class of 2018
Kari L Chesney	University of Missouri	Class of 2020
Jeremy Shapiro	Washington University in St. Louis	Class of 2019
Carter Paterson	Washington University in St. Louis	Class of 2019
Josh Halilej	Washington's university in St. Louis	Class of 2019
Pranav nandan	Washington University in St. Louis	Class of 2019
Jack Seigel	Brown School of Social Work	Class of 2020
Norah Rast	Washington University in St. Louis	Class of 2017
Yaala Muller	Washington University in St. Louis	Class of 2017
Valorie Engholm	University of Missouri- Kansas City	Class of 2016
Erica Brandling-Bennett	Washington University in St. Louis	PhD Class of 2006
Katie Greenberg	Washington University In St. Louis	Class of 2017
Caroline Racine Belkoura	Washington university in st louis	Class of 2005
Kara Hom	Washington University in St. Louis	Class of 2019
Fiona Sloan	Washington University in St. Louis	Class of 2013
Sathya Sridharan	Washington University in St. Louis	Class of 2009
Shivani Desai	Washington University in St. Louis	Class of 2017
Ella Sudit	Washington Univeristy in St Louis	Class of 2019
Nancy Goth	MIZZOU	Class of Dec. 1975

AMERICAN OVERSIGHT

Celeste Bleiberg	Washington university in St. Louis	Class of 2019
Sara Baker	Washington University in Saint Louis	Class of 2012
Kendall Martinez-Wright	Lincoln University of Missouri	Class of 2020
Delaney Catlettstout	University of Missouri	Class of 2021
Luke Davis	University of Missouri - Columbia	Class of 2020
Mark Matousek	Washington University in St Louis	Class of 2016
Sofia Sanchez	Crowder College	Class of 2016
Olivia Hunt	University of Missouri Columbia	Class of 2020
Elizabeth Clark	Missouri Western university	Class of 2023
Andrea Waner	University of Missouri	Class of 2011 and 2020
Olliver Wilson	Ozarks Technical Community College	Class of 2021
Cort Gamblin	West Plains Senior High	Class of 2012
Jianan Almusawi	Missouri State University	Class of 2022
Victoria altic	Ozarks Technical Community College	Class of 2023
Maggie Morris-Owens	Missouri State University	Class of 2018
Ann Tilley	Washington University	MD class of 2001
Elizabeth Fuchs	University of Missouri St. Louis	Class of 2013
Katherine Weltha	Missouri Southern State University	Class of 2017
Maria Ruiz	Washington University in St. Louis	Class of 2017
Kathleen Fisher	Missouri State University	post graduate courses
Steph Perkins	Missouri State University	Class of 2008
Patricia	Tracy	Class of 1988
Neveen Ayesh	Southern Illinois university of Edwardsville	Class of 2020
Brian Connor	University of Missouri - Columbia	Class of 2004
Jennifer Suits	St. Louis U, Parkway South, Maryville University, Washinton U.	1982 HS Diploma, 1987 BA, 1990 JD, 2001 LLM
Samuel Schnabel	Washington University in St. Louis	Class of 2016
Cynthia Alimp	Vatterott College	Class of 2008
Sarah Pritchard	Washington University in St. Louis	Class of 2016
Machelle Warren	Missouri University of Science and Technology	Class of 2019
Carlissa Gilliam	University of Missouri, Missouri State University	Class of 1990, 2003
Lyra Noce	University of Missouri, Columbia	Class of 2006
Craig Gilliam	Missouri State University	Class of 1994

AMERICAN OVERSIGHT

Ronald Gregush	Washington University in St. Louis School of Medicine	Class of 2001
Maanasa Bandla	Washington University in St. Louis	Class of 2019
Nick Annin	Washington University in St. Louis	Class of 2017
Dana Sandweiss	St Louis University School of Law	Class of 1999
Lauren Averill	Washington University	Class of 2001
Emily Gallop Coen	Emily Gallop Coen	Class of 1996
Carolyn Petite	Washington University in St. Louis	1989 (BA) 1995 (JD)
Lucy Chin	Washington University in St. Louis	Class of 2017
Ruth Downs	Washington University In St. Louis , Brown School of Social Work	Class of 2007
Emily Gaumnitz	Washington University in St. Louis	Class of 2017
Michael Collins	Washington University in St. Louis	Class of 2018
Alex Le	Washington University in St. Louis	Class of 2021
Sophia Keskey	Washington University in St. Louis	Class of 2016
Jacob Noel	Washington University in St. Louis	Class of 2019
Sarah Turecamo	Washington University in St. Louis	Class of 2017
Jessie Kurz	Washington University in St. Louis	Class of 2018
Felice Segall	Washington University in St. Louis	Class of 2017
Paul Moiseyev	Washington University in St. Louis	Class of 2017
Ann Gocke	Washington University in St. Louis	Class of 2017
Samantha Katz	Washington University in St. Louis	Class of 2017
Ruvinee Senadheera	Washington University in St. Louis	Class of 2017
Haley Baker	Washington University in St. Louis	Class of 2016
Rachel Partridge	Washington University in St. Louis	Class of 2017
Samantha Breen	Washington University in St. Louis	Class of 2017
Daniel Meyerson	Washington University in St. Louis	Class of 2017
Claire Savage	Washington University in St. Louis	Class of 2017
Esther Cohen	University of Missouri - Columbia	Class of 1999
Satvik Reddy	Washington University In St Louis	Class of 2021
Gladys Pilz	Washington University in St Louis	Class of 1969
Maya Liran	Washington University in St. Louis	Class of 2015
Corey Salzer	Washington University In St. Louis	Class of 2017
Alexandra Barrett	Washington University in St. Louis	Class of 2017

AMERICAN OVERSIGHT

Kira Saks	Washington University in St. Louis	Class of 2017
Lauren Peffley	Washington University in St. Louis - Brown School of Social Work	Class of 2015
Holly Gulick	Missouri Southern State University	Class of 2018
Zach Kassman	Washington University in St. Louis	Class of 2020
Monica Sass	Washington University in St. Louis	Class of 2019
Hena Vadher	Washington University in St. Louis	Class of 2017
Sam Shonfeld	Washington University in St. Louis	Class of 2021
William Sieling	Washington University in Saint Louis	Class of 2016
Meghna Padmanabhan	Washington University in St. Louis	Class of 2021
Shelby Dickison	University of Missouri	BS Class of 2004/MD Class of 2011
Jonathan Hirshberg	University of Missouri Columbia School of Medicine	Class of 2014
Shayna Conner, MD, MSCI	University of Missouri-Columbia	Class of 2008
Mary Keegan	University of Missouri Columbia School of Medicine	Class of 2010
Helen Fox	Washington University in St. Louis	Class of 2019
Alison Leslie	Washington University in St. Louis	Class of 2017
Meryl Sundy	University of Missouri	Class of 2014
Bianca Jyotishi	Washington University in St. Louis	Class of 2019
Libby Trammell	Washington University in St. Louis	Class of 2019
Anna Bartels-Newton	Washington University in St. Louis, George Warren Brown School of Social Work	Class of 2020
Sally Rifkin	Washington University in St. Louis	Class of 2018
Sheree Hickman	Washington University in St. Louis, Brown School	Class of 2019
Ben Feigenbaum	Washington University in St. Louis	Class of 2019
Kristen Beatty	Washington University in St. Louis	Class of 2019
Claudia Noto	Washington University in St. Louis	Class of 2018
Georgia Bartels-Newton	Washington University in St. Louis	Class of 2021
Melanie Marcille	Washington University in St. Louis	Class of 2018
Zachary Romo	Washington University in St. Louis	Class of 2014
Stacey Bayer	The Brown School of Social Work at Washington University	Class of 2020
Katherine Chew	Washington University in St. Louis	Class of 2017, class of 2019

AMERICAN OVERSIGHT

Elizabeth Schmidt	Washington University in St. Louis	Class of 2015/2019
Purti Pareek	Washington University School of Law	Class of 2019
Dormie Ko	Washington University in St. Louis	Class of 2019
Melanie Cohen	Washington University in St. Louis	Class of 2017
Eric Freeman	Washington University in St. Louis	Class of 2019
Maya Sorini	Washington U in St. Louis	Class of 2018
Marissa Bohrer	Washington University in St. Louis	A.B., Class of 2014; MSW, Class of 2019
Mindy Resnick	University of Missouri- Columbia	Class of 2004
Swetha Nakshatri	Washington University in St. Louis	Class of 2020
Logan Phillips	Washington University in St. Louis	Class of 2021
Reuben Hogan	Washington University of Saint Louis	Class of 2018
Amar Karahodzic	Washington University in St. Louis	Class of 2019
Anne brown	University of Missouri-St. Louis	Class of 2021
Sarah Yapo	Washington University in St. Louis	Class of 2019
Kayce Sorbello	Washington University in St. Louis	Class of 2019
Landon Krantz	University of Missouri—Columbia	Class of 2014
Tony Bell	University of Missouri	Class of 2016
Shamilka Seneviratne	Washington University in St. Louis	Class of 2019
Anand Chukka	Washington University in St. Louis	Class of 2019
Jack Radley	Washington University in St. Louis	Class of 2019
Tess Hankin	Washington University in St. Louis	Class of 2020
Samantha Elster	Washington University in St. Louis	Class of 2020
Matthew	Grossman	Class of 2020
Sabrina Tannehill	Washington University in St Louis	Class of 2019
Natalia Molinatti	Washington University in St. Louis	Class of 2019
Chace	Conroy	Class of 2016
Kriti Prasad	Washington University in St. Louis	Class of 2017
Isabelle Adams	Washington University in St. Louis	Class of 2016
Maggie Harr	Maggie Harr	Class of 2000
Sydney Woods	Washington University in St. Louis	Class of 2018
Alexander Berezin	Washington University in St. Louis	Class of 2018
Ryan Welish	Washington University in St Louis	Class of 2019

AMERICAN OVERSIGHT

Jenny Tallering	Washington University in St. Louis	Class of 2020
Hanna Colin	Washington University in St. Louis	Class of 2014
Katelyn Taira	Washington University in St. Louis	Class of 2018
Haley Eagle	Washington University in St. Louis	Class of 2019
Amanda Drath	Washington University in St. Louis	Class of 2019
Anne Coulomb	Washington University in St. Louis	Class of 2019
Theanne Liu	Washington University in St. Louis	JD/MSW Class of 2020
Morgen Seim	Washington University School of Law in St Louis	Class of 2021
Meredith Davis	Washington University in St . Louis	Class of 2017
Elisabeth Marsh	Catholic University of America	Class of 2008
Roxy Ackerman	Washington University in St. Louis	Class of 2020
Monika Pawar	Washington University in St. Louis	Class of 2016
Sophie Revere	Washington University in St. Louis	Class of 2015
Talia Weine	Washington University in St. Louis	Class of 2021
Emily Gleason	Washington University in St. Louis	Class of 2019
Jacob Maddox	Washington University of St. Louis	Class of 2018
Schuyler Atkins	Washington University in St. Louis	Class of 2016
Allyson Richman	Washington University a School of Law	Class of 2021
Madeleine Seibold	Washington University in St. Louis	Class of 2019
Mark Buhrmester	University of Missouri - Columbia	Class of 2008
Lara Rix	Washington University in St. Louis	Class of 2021
Nicole Lynch	Missouri State University	Class of 2016
Ashna Vasa	Washington University in St. Louis	Class of 2018
Nathan Hopkins	University of Missouri	Class of 2011
Jessica Dyer	Washington University in St. Louis	Class of 2006
Hannah Lacava	Washington University in St. Louis	Class of 2017

AMERICAN OVERSIGHT

Mark R. Reading and Bret Fischer provided the following information:

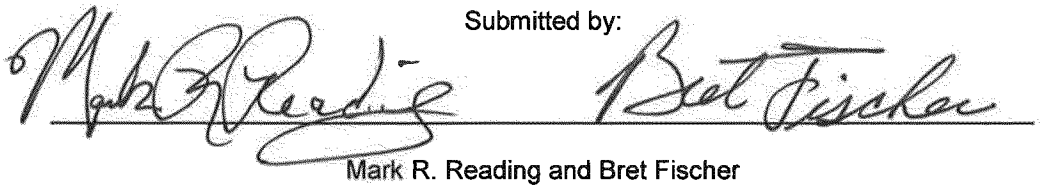
AMERICAN OVERSIGHT

RECEIVED

JUN 07 2019

STATE AUDITORS OFFICE

Submitted by:



Mark R. Reading and Bret Fischer
Jefferson City, MO 65109
(573) 694-6828
Primary Contact Person

Referendum Petition 2020-R001
Relating to HB 126 related to abortion passed by Missouri General Assembly in 2019 session
The materials are being submitted in support of qualification of the measure, but in opposition to passage.

Proposed Statement of Fiscal Impact

Fiscal Impact Information Submitted Pursuant to Section 116.175, RSMo.

The proposed legislation will result in an estimated loss of $6.16 billion in state and local revenue, including $5.2 million lost in state general revenue, $596,695 lost in state dedicated funds, $4 million lost in local funds, and $6.16 billion lost in federal funds.

ESTIMATED NET EFFECT ON STATE FUNDS		
Fund Affected	**FY 2021**	**FY 2022**
General Revenue	($3,811,195)	($5,211,195)
Other State Dedicated Funds	($596,695)	($596,695)
Total Estimated Net Effect on All State Funds	($4,407,890)	($5,807,890)
ESTIMATED NET EFFECT ON LOCAL FUNDS		
Local Funds	($4,020,542)	($4,020,542)
Total Estimated Net Effect on All Local Funds	($4,020,542)	($4,020,542)
ESTIMATED NET EFFECT ON FEDERAL FUNDS		
Federal Funds	($6,152,760,664)	($6,152,760,664)
Total Estimated Net Effect on Federal Funds	($6,152,760,664)	($6,152,760,664)
Total All Funds	($6,161,189,096)	($6,162,589,086)

AMERICAN OVERSIGHT

Introduction

HB 126 passed by the General Assembly and signed by Governor Parson makes a variety of changes to the state's laws on abortion, pregnancy resource centers, parental notification, and state regulations. These provisions have a dramatic impact on women's human rights, privacy rights, reproductive rights, and women's health.

The fiscal note prepared by the General Assembly's Oversight Division was prepared in haste and did not allow it to provide for thoughtful analysis and fiscal estimates by state agencies and the other entities that the division normally reaches out to for comment. The Oversight Division's fiscal note, in an exceptionally unusual preface to its work, states:

> ***"Due to time constraints of less than 1 hour, Oversight was unable to receive some of the agency responses in a timely manner and performed limited analysis.*** *Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note."* (emphasis added)

As of June 7, 2019, the Division continues to show the hurried fiscal note as its current estimate, so it appears unlikely that the Division will update this fiscal note. This fiscal submission will go into detail on a variety of topics not addressed by the Oversight Division. Table 1 provides a list of the areas that may result in an economic impact to the state. It shows the local and state taxes that would be affected by changes in economic activity related to the legislation. The table also includes a list of the agencies of state and local government that could need additional resources due to making illegal an activity that was previously legal. Most of these items have already been identified in the press as issues as the result of the recently passed abortion legislation passed in Missouri, Alabama, and Georgia. Many have also been identified during the travails faced by Indiana and North Carolina when their legislatures passed controversial bills on social issues.

The analysis will focus on the top issues on the list given the short deadline required by the Auditor's office for submission of fiscal note analysis. The possible issues have been identified by reviewing press coverage of recent controversial legislation over the past few years and cover a wide range of different topics.

AMERICAN OVERSIGHT

Table 1 - Abortion - Possible Areas of Lost Economic Activity

	Local		Local surtaxes or fees				State			
Type of activity	Income Tax (St. Louis/KC earnings tax)	Sales Tax	Hotels	Auto rentals	Convention center	Other tourism taxes	Income tax	Sales Tax	Corporate Tax	Athletes & Entertainers
Loss of Medicaid as indicated in fiscal note for HB 126	X	X					X	X	X	
Loss of expansions of companies – Marquee expansions such as being considered by General Motors in Wentzville	X	X					X	X	X	
Loss of arts and entertainers - i.e. concerts, plays, film productions, etc.		X	X	X	X	X				X
Loss of sports events – NCAA and other amateur events – example NCAA (North Carolina), St. Louis NCAA men's basketball regional (2020), U.S. Women's Team Soccer in St. Louis (2019)		X	X	X	X	X				X
Loss of conventions	X	X	X	X	X	X	X	X	X	
General reduction in tourism	X	X	X	X	X	X	X	X	X	
Boycott of Missouri businesses - Enterprise Rent-A-Car, Edward D. Jones, Anheuser Busch, Monsanto, Panera Bread, Purina, etc.	X	X					X	X	X	
Boycott of Missouri businesses by pension systems in other states	X	X					X	X	X	
Boycott of state and local bond issues resulting in higher interest rates paid										
Business loss to major Research Medical Centers - BJC, Stowers Center, etc.	X	X					X	X	X	
Other states boycotting state employee travel to Missouri	X	X	X	X	X	X		X		
Loss of current companies – examples are Indiana (LGBT) and NC (bathrooms)	X	X					X	X	X	

AMERICAN OVERSIGHT

Abortion - Possible Areas of Lost Economic Activity (continued)

	Local		Local surtaxes or fees				State			
Type of activity	Income Tax (St. Louis/KC earnings tax)	Sales Tax	Hotels	Auto rentals	Convention center	Other tourism taxes	Income tax	Sales Tax	Corporate Tax	Athletes & Entertainers
Donors to universities – Alabama example (loss of grants/students/etc.)	X	X					X	X		
Higher Education - withdrawal of students or decrease in attendance	X	X					X	X		
	Local Cost		**State General Revenue cost**							
Increase in budgets for agencies as a result of making something illegal that had previously been legal										
Local agencies										
Local Prosecutors	X									
Local law enforcement	X									
State agencies										
Public Defender			X							
Judiciary			X							
Corrections			X							
Attorney General			X							

AMERICAN OVERSIGHT

Table 2 - Summary of Estimated Effect of HB 126

Page #	Table #	Type of activity	FY 2021	FY 2022
9-10	Table 3	Loss of Medicaid as indicated in fiscal note for HB 126	($6,152,760,664)	($6,152,760,664)
8		Loss of Marquee expansions of companies such as General Motors expansion at Wentzville	TBD	TBD
10-11	Table 4	Loss of arts and entertainers - i.e. concerts, plays, film productions, etc.	($4,480,500) including ($2,349,900) General Revenue and ($2,130,600) local funds	($4,480,500) including ($2,349,900) General Revenue and ($2,130,600) local funds
11		Pregnancy Resource Center Tax Credit	$0	($1,400,000) and will grow to ($4,900,000) or more in FY 2026
12-13	Tables 5 and 6	Loss of sports events – NCAA and other amateur events – example NCAA (North Carolina), St. Louis NCAA men's basketball regional (2020), U.S. Women's Team Soccer in St. Louis (2019)	($3,947,932) including ($1,461,295) General Revenue and ($596,696) in state dedicated sales taxes and ($1,889,942) local funds	($3,947,932) including ($1,461,295) General Revenue and ($596,696) in state dedicated sales taxes and ($1,889,942) local funds
		Loss of conventions	TBD	TBD
		General reduction in tourism	TBD	TBD
		Boycott of Missouri businesses - Enterprise Rent-A-Car, Edward D. Jones, Anheuser Busch, Monsanto, Panera Bread, Purina, etc.	TBD	TBD
		Boycott of Missouri businesses by pension systems in other states	TBD	TBD
		Boycott of state and local bond issues resulting in higher interest rates paid	TBD	TBD
		Business loss to major Research Medical Centers - BJC, Stowers Center, etc.	TBD	TBD
		Other states boycotting state employee travel to Missouri	TBD	TBD
		Loss of current companies – examples are Indiana (LGBT) and NC (bathrooms)	TBD	TBD
		Donors to universities – Alabama example (loss of grants/students/etc.)	TBD	TBD

AMERICAN OVERSIGHT

		Higher Education - withdrawal of students or decrease in attendance	TBD	TBD
		Total loss of funds	($6,161,189,096)	($6,162,589,096)
		GR	($3,811,195)	($5,211,195)
		Other state funds	($596,695)	($596,695)
		Local funds	($4,020,542)	($4,020,542)
		Federal Funds	($6,152,760,664)	($6,152,760,664)
		Budget increases		
		Local agencies		
		Local Prosecutors	TBD	TBD
		Local law enforcement	TBD	TBD
		subtotal	TBD	TBD
		State agencies		
		Public Defender	TBD	TBD
		Judiciary	TBD	TBD
		Corrections	TBD	TBD
		Attorney General	TBD	TBD
		subtotal	TBD	TBD
		Total	TBD	TBD

AMERICAN OVERSIGHT

Overview of Reasons to Consider Various Issues as part of Abortion Fiscal Analysis

Medicaid summary

Most important, the Legislative Oversight Division failed to include in its summary page the largest cost item related to the bill – the loss of federal Medicaid funds. This issue is referenced in the text of the fiscal note but not included in the summary which in effect helped its passage by keeping the state cost down.

Medicaid is the single largest program in the entire state budget, consisting of approximately $11.2 billion in the FY-2020 budget, spread principally among three state departments. That amount includes approximately $6.2 billion federal funds. Any legitimate, responsible fiscal note should properly reflect the full cost of the legislation up to the amount possible under current state and federal laws. The Department of Social Services indicates that HB 126 violates the Hyde amendment in federal law with total loss of federal funds possible as a result.

Losing a portion or all of the federal funds would significantly and negatively impact Missourians. Medicaid funding provides a core funding component for hospitals, nursing homes, mental health facilities, prescription drugs and other services relied upon by nearly one million Missourians. Without such funding the state would have to pass a large tax increase to replace the lost federal funds to pay for the services or radically reduce the services available. Hospitals and nursing homes would be dramatically affected by loss of the federal funds, with some closing their doors. Health outcomes for the state's population would worsen. The loss of $6.2 billion in federal funds would result in the loss of employment and services that would multiply many times over in the loss of income, sales, and corporate tax revenues.

Boycott history summary

The Oversight Division also does not evaluate the possible impact of boycotts and other social pressure that would reduce economic activity and state revenue. Hard wedge social issues have a history of creating negative economic impact in states that pass related legislation. The two best examples are Indiana (2015) and North Carolina (2016), which faced serious boycotts and blowback after passing such legislation. Despite the very recent history of the well-documented threats and actual economic harm, the Oversight Division does not even mention or consider the possibility that HB 126 might have similar consequences. This despite the growing list of corporations, organizations, and people speaking out about the problems with recent abortion legislation passed in Missouri, Alabama, and Georgia. This also despite the fact that protests on race, workplace benefits, and campus leadership at the University of Missouri (2015)[i] led to significant student loss, reduced donations, loss of economic activity in Columbia, etc. Each of these examples shows that turmoil leads to economic loss and should be considered in an economic analysis.

Indiana passed a Religious Freedom Restoration Act[ii] in 2015. Indiana was forced to repeal and make significant changes because of the immediate economic threats levied through protests and by corporations and organizations against the state. Nine CEOs called for legislation to protect against discrimination, including Salesforce marketing, Anthem, Angie's List, Eli Lilly and Company, and Roche Diagnostics. The NBA, WBNA, and their Indiana-based teams did the same. U.S. Track and Field expressed deep concern. Angie's List threatened to cancel a $40 million expansion to its Indianapolis based headquarters. Salesforce announced it would cancel all programs that required customers or employees to travel to Indiana. Many other companies, politicians, and organizations raised their voices against the bill. In the face of this pressure, Indiana relented and passed changes to forestall major economic loss to the state.

North Carolina passed a Public Facilities Privacy and Security Act[iii] in 2016. The Wikipedia article footnoted indicates that North Carolina's economy lost over $400 million in investment and jobs. However, reporting at the time by the Associated Press indicated a cost of $3.8 billion[iv] including over 2,900 jobs by companies that cancelled projects - PayPal 400 job project, Deutsche Bank 250 job project, Adidas 160 job shoe factory, Voxpro hundreds of customer support workers, and CoStar 700 jobs. In addition, in 2016 the NCAA stripped the state of seven events including the men's championship

AMERICAN OVERSIGHT

basketball event and indicated it would not receive any additional events through at least 2022 unless the bill was repealed. The Atlantic Coast Conference also moved events to neutral sites outside of North Carolina. The NBA also moved its All-Star game out of the state to New Orleans.

Despite these examples, the Oversight Division did not mention this possibility in the fiscal note. In each of the examples a sizable number of businesses staked out a position and many consumers have expected them to take such a position. Some possible boycotts on Missouri have already been reported[v] including companies such as Anheuser Busch, Enterprise Rent-A-Car, Panera Bread, Edward Jones, and Purina pet food. As litigation proceeds on HB 126, the calls and list of boycott suggestions will likely increase.

Marquee business expansions

As noted above, Indiana and North Carolina were faced with losing major business expansions as a result of passing controversial legislation. A major focus of the past legislative session was passing legislation to provide tax credits for General Motors for expansion at the Wentzville auto plant. General Motors will have to decide whether HB 126 is important to its expansion plans or factors into its equation when considering other suitors. However, the General Motors vision[vi] includes Driving Social Impact and Diversity which are commitments to finding women and minorities for employment and investing in women for leadership positions. HB 126 would seem to make it more difficult for GM to recruit women for Missouri jobs at all levels. The possible GM expansion is an example of the type of expansions that North Carolina lost. This fiscal note does not include any estimate for business expansion loss at this time because the bill just passed and no known business has announced concerns at this point.

Polls summary

The effectiveness of boycotts or other economic action is dependent upon the public's opinion about the issue. Overwhelming public opposition to the Indiana and North Carolina laws led to repeal of the legislation.

Polling on the issue of abortion and women's rights is also strong. Four recent polls by Gallup, Morning Consult, CBS News, HuffPost/YouGov show that most Americans do not support the abortion bills passed by Missouri, Alabama, Georgia, and Ohio.

- https://news.gallup.com/opinion/gallup/257627/alabama-bill-odds-public-consensus-abortion.aspx
- https://www.cbsnews.com/news/majority-of-americans-dont-want-roe-v-wade-overturned-cbs-news-poll-finds/
- https://morningconsult.com/2019/05/22/most-voters-oppose-abortion-laws-enacted-alabama-georgia/
- https://www.huffpost.com/entry/alabama-abortion-law-poll_n_5cdee283e4b00e035b8f7452
- https://www.vox.com/2019/5/22/18635563/poll-alabama-abortion-ban-law-democrats-republicans-2020

CBS News

- 67% want Roe v. Wade left in place, including 69% of women and 65% of men.
- Twice as many people would be angry about Roe v. Wade being overturned than happy or satisfied.
- While views divide along partisan lines, Republicans are split on overturning Roe v. Wade, with 45% saying keep it as is and 48% preferring its overturn.

Gallup

- 83% in support of abortion if woman's life endangered.
- 77% in support of abortion if the result of rape or incest.

AMERICAN OVERSIGHT

HuffPost/YouGuv

- 57% disapprove of Alabama's law compared to 31% support.
- 50% approve of legal abortion in all or most cases compared to 37% that want abortion illegal in all or most cases.

Morning Consult

- 56% disapprove of states passing laws like those in Alabama and Georgia - similar to HuffPost/YouGov poll.
- 45% of Republicans think abortion should be legal in cases of rape, incest, or when a mother's life is in danger – similar to CBS News poll.

Loss of federal Medicaid funding

The largest possible impact on the Missouri economy as a result of the passage of HB 126 is the possible complete loss of federal funds for the state Medicaid program. The final fiscal note for HB 126 filed by the legislature's Oversight Division indicates that the state Department of Social Services reported that full funding for the Medicaid program could be lost under current federal law. The Oversight Division's fiscal note cover page summary indicates that the state loss could be more than $4.9 million as a result of passage. That is a substantial understatement of the amount of the loss which is further explained in the fiscal note's text. The $4.9 million Oversight Division fiscal note basically only reflects the cost of the pregnancy resource center tax credit and completely ignores the possible Medicaid funding loss. Medicaid is the single largest program in the entire state budget, consisting of approximately $11.2 billion in the FY-2020 budget spread principally among three state departments. That amount includes approximately $6.2 billion federal funds. Any legitimate, responsible fiscal note must properly reflect the full cost of the legislation up to the amount possible under current state and federal laws.

Federal law known as the Hyde Amendment (a "rider" to the Congressional appropriations bill for the Department of Health and Human Services renewed each year since 1981) restricts the ability of states to use federal funds to pay for abortions for Medicaid recipients except in remarkably narrow instances—where the pregnancy resulted from rape or incest and when necessary to save the life of the mother. The Missouri Department of Social Services has paid for abortions in such cases previously, using federal Medicaid funding pursuant to provisions of the Hyde Amendment. HB 126 prohibits abortions in Missouri in cases of rape or incest at eight weeks gestational age or later. Thus, it clearly violates provisions of federal law under the Hyde Amendment. That violation jeopardizes all federal Medicaid funding received by Missouri ($6.2 billion).

Losing a portion or all of the federal Medicaid funds would significantly and negatively impact Missourians, nearly one million of whom rely on the program for critical health care services. Medicaid funding provides a core funding component for hospitals, nursing homes, and mental health facilities. It is also a core component of funding prescriptions and other services. Without such funding the state would have to pass a large tax increase to replace the lost federal funds to pay for the services or radically reduce the services available. Without the federal funds hospitals and nursing homes would be dramatically affected, with some closing their doors. Health outcomes for Missourians would worsen.

The loss of all Medicaid funding would decimate the Missouri economy and health care for Missouri citizens. In addition to the loss of $6.2 billion in federal funds, the loss of employment and services would multiply many times over in the loss of income, sales, and corporate taxes. For the purposes of this fiscal note, we are including only the loss of federal funds in our estimate (not the massive multiplier effects).

It is critical to understand the human cost involved in such an ill-conceived measure as HB 126—and in particular, the impact on women's health. As the Missouri Foundation for Health stated regarding HB 126, "This law is just the latest action that flies in the face of a preponderance of evidence, conflicts with widespread consensus among health professionals, and will, in fact, be harmful, not helpful to women's health overall."

AMERICAN OVERSIGHT

An evidence-based, scientific approach to women's health has led to great improvements in the health of women in states that have adopted such measures. However, when governments employ heavy-handed schemes like HB 126 to limit women's access to reproductive health services, women's health suffers (maternal mortality rates rise, cases of HIV increase, etc.). This is particularly problematic for Missouri because the health of Missouri women already significantly lags women's health nationally. The Missouri Foundation for Health reports that Missouri ranked 50th in 2018 in health outcomes for women, down from 43rd in 2016; and that in 2018, Missouri ranked 42nd in maternal mortality with a mortality rate of 32.6 per 100,000 (up 14 percent since 2016) compared to a national average of 20.2. So already poor health outcomes for Missouri women are getting worse. Tragically, Missouri's response was to pass a measure that will further restrict women's access to reproductive health services and thereby accelerate the decline in women's health.

Table 3 is an excerpt of the Medicaid funding table included in the Governor's Executive Budget[vii] (page 11-18) for FY 2020 showing the Governor recommended $6.2 billion in federal funds for the program. The fiscal analysis reflects the loss of the full amount because it reflects current federal law[viii].

Table 3 - Medicaid Funding in State Budget

	FY 2019 Appropriation	FY 2020 Governor Recommended
General Revenue	$2,073,734,533	$2,390,252,752
Federal Funds	$5,833,111,912	$6,152,760,664
Other Funds	$2,668,355,622	$2,664,344,600
Total	$10,575,202,067	$11,207,358,016

Arts and Culture

Nonprofit arts and cultural organizations make their communities more desirable places to live and work. They also power the state's economy by creating jobs and driving consumer and business spending, which generates significant state and local government revenue.

An extensive 2015 nationwide economic impact analysis—Arts & Economic Prosperity 5: the Economic Impact of Nonprofit Arts & Cultural Organizations & Their Audiences by Americans for the Arts—evaluated this impact. The Missouri Arts Council commissioned a Missouri-specific version of this nationwide study. The study determined:

- The arts and culture industry in Missouri generated $1.039 billion in total statewide economic activity in FY2015.
- That amount includes both $602.9 million spent by organizations that employed people locally, bought goods and services from local businesses, and attracted tourists; and $436.1 million in additional spending by audiences pumped revenue into restaurants, hotels, retail stores, parking garages, and other local businesses.
- The combined spending by organizations and audiences supported 31,925 full-time equivalent jobs, created $805.6 million in household income for local residents, and delivered $89.6 million in revenue to local ($42.6 million) and state ($47.0 million) governments.

According to the study, more than 21.4 million people attended arts and culture events produced by 491 Missouri organizations in FY2015. Generally speaking, the arts community has strongly supported progressive government policies and vigorously opposed draconian measures such as HB 126. High-profile actors, directors, musicians, etc., have made headlines opposing measures such as the North Carolina bathroom bill and the Indiana bill that sought to discriminate against the LGBT community. Therefore, it seems likely that at least some arts community personages will refuse to perform in Missouri in response to passage of HB 126. Similarly, it appears likely that many arts-minded attendees will opt to

AMERICAN OVERSIGHT

avoid Missouri performances; instead traveling to other states with less repressive laws. Given the figures derived from the Missouri Arts Council study, even a small decrease in economic activity tied to the arts and cultural organizations would mean a significant blow to the Missouri economy. The table below calculates the loss in state and local tax revenue assuming a reduction in arts/culture economic activity of 1.0%, 2.5% and 5.0%. We recommend the 5.0% option for the following reasons:

1. It is important to note that the figures referenced above from the 2015 Missouri Arts Council study do not include the economic impact of for-profit arts and culture organizations. Therefore, spending by for-profit arts and entertainment organizations and venues, such as the Fox Theatre in St. Louis, is not included. Such economic activity is likely to be as big as or bigger than that of the nonprofit entities and was not included simply because no similar study of for profit arts/cultural economic impact in Missouri was available. Thus, the economic loss to the state and local governments would be substantially higher if the for-profit entities were taken into account.

2. The data from the FY2015 study has not been multiplied to account for inflation in the years since 2015, which tends to understate the impact of the potential loss to the state and local governments.

Table 4 - Reduction in Arts/Culture economic activity

		1.0% reduction	2.5% reduction	5.0% reduction
State tax revenue	$46,998,000	$469,980	$1,174,950	$2,349,900
Local tax revenue	$42,612,000	$426,120	$1,065,300	$2,130,600
Overall loss	$89,610,000	$896,100	$2,240,250	$4,480,500

Pregnancy Resource Center Tax Credit

Four significant changes related to the pregnancy resource center tax credit were created by HB 126.

- The definition of a pregnancy resource center is modified to include facilities that provide assistance to women and families with crisis pregnancies or unplanned pregnancies by offering services specified in the bill and services provided under the Missouri Alternatives to Abortion Services Program.
- The tax credit that may be claimed is increased from 50 percent of the amount contributed to 70 percent beginning in tax year 2021.
- The $3.5 million cap on the amount of tax credits that may be claimed annually is removed in Fiscal Year 2022.
- The December 31, 2024 sunset provision on the program is eliminated.

While it is difficult to estimate the fiscal impact of the definitional change, it is clear that the remaining three provisions are likely to significantly increase state costs. Even if donations to pregnancy resource centers remain the same, the cost to the state for tax credits will increase markedly due to raising the credit from 50 to 70 percent of the amount contributed. That results in a $1.4 million FY-22 cost to the state as reported by the Oversight Division in its fiscal note for HB 126.

Removing the cap on the amount of tax credits will result in much greater costs to the state. Those costs are effectively inestimable because there will be no limit on the amount of credits that can be claimed. The only check on the amount of credits will be the amount of eligible contributions made to pregnancy resource centers. Therefore, that cost is unknown but potentially highly significant.

Eliminating the sunset on the amount of tax credits will cost the state at least $3.5 million annually beginning in FY-26 (also as reported by Oversight). Therefore, the total cost to the state will be $4.9 million to unknown.

AMERICAN OVERSIGHT

Sporting events and conventions

Missouri is in much the same situation as North Carolina was in 2016-2017 in terms of sporting events. There are eight NCAA events scheduled from 2019 to 2022. The NCAA stripped North Carolina of seven events. The NHL All-Star Game is scheduled in St. Louis. The NBA moved its All-Star game from North Carolina in response to passage of the Public Facilities Privacy and Security Act in 2016.

In addition, US Gymnastics will have its annual championship in Kansas City in 2019 and its Olympic Trials in 2020. Given the tremendous sadness associated with widely reported abuse suffered by the women's gymnastics team members, it would seem that there will be calls by athletes and others to boycott at least their portion of the event in hopes of having it moved elsewhere.

The events include:

Kansas City events

- 2019 U.S. Gymnastics Championships – August 8-11, 2019 - Sprint Center

St. Louis events

- 2020 NHL All-Star Game - January 24-26, 2020 - Enterprise Center
- 2020 Missouri Valley Conference Men's Basketball Tournament - March 5-8, 2020 - Enterprise Center
- 2020 NCAA Men's Basketball Championship First/Second Rounds - March 19 & 21, 2020 - Enterprise Center
- 2020 NCAA Division II Spring Festival - May 10-16, 2020 - Lindenwood University / Dwight Davis Memorial Tennis Center
- 2020 NCAA Division III Men's & Women's Tennis Championships - May 18-23, 2020 - Dwight Davis Memorial Tennis Center
- 2020 U.S. Olympic Team Trials - Gymnastics - June 25-28, 2020 - Enterprise Center
- 2021 NCAA Division I Wrestling Championships - March 18-20, 2021 - Enterprise Center
- 2021 NCAA Division III Women's Volleyball Championship - November 18-20, 2021 - Washington University Field House
- 2022 NCAA Division II Wrestling Championships - March 11-12, 2022 - Chaifetz Arena
- 2022 NCAA Division II Women's Lacrosse Championship - May 20-22, 2022 - Harlen C. Hunter Stadium

The NCAA may not move all of its events to another location outside Missouri. Other sponsors will use their own criteria and judgement to determine whether to proceed with their events. However, data exists for the economic impact of one of the NCAA events to help put into perspective the loss of a single event. In 2020 St. Louis will host the NCAA Men's Basketball tournament first and second round games at the Enterprise Center. Multiple events on the above list are held at the Enterprise Center or at venues of a similar size.

Table 5 shows the economic estimate as reported in the local press for seven of the eight venues that hosted the same men's basketball rounds in 2019. The number of seats shown is the basketball configuration seat number as reported in Wikipedia. The average economic impact per seat for the seven venues is $443. That average economic impact would compute to $9.7 million in economic activity in St. Louis for this event.

AMERICAN OVERSIGHT

Table 5 - Estimated Economic Impact of 2020 NCAA Men's Basketball Tournament at Enterprise Center

City	Stadium/Arena	Seats	Economic Impact	Economic Impact per seat
Hartford, CT	XL Center	16,294	$7,700,000	$473
Salt Lake City, UT	Vivint Smart Home Arena	18,306	$5,500,000	$300
Des Moines, IA	Wells Fargo Arena	16,110	$6,000,000	$372
Jacksonville, FL	Jacksonville Veterans Memorial Arena	14,091	$10,000,000	$710
Tulsa, OK	BOK Center	17,839	$9,000,000	$505
Columbus, OH	Nationwide Arena	19,500	$6,000,000	$308
Columbia, SC	Colonial Life Arena	18,000	$9,000,000	$500
San Jose, CA	SAP Center	18,543	N/A	N/A
	Total without San Jose	120,140	$53,200,000	$443
St. Louis estimate	Enterprise Center	22,000	$9,741,968	$443

Table 6 estimates the state and local tax loss for a loss of a single sporting event the size of the NCAA Men's basketball Tournament games in St. Louis. Assuming the sales tax is applied to the entire economic activity, and not including a calculation for individual income taxes, the cancellation of a single event would cost the state $411,598. In the past the Oversight Division has used a statewide local sales tax estimate of 3.88% for its fiscal notes, although the major event areas often are higher. This fiscal note assumes the 3.88% for a total loss of $377,988 in local sales taxes.

This fiscal note assumes the loss of five events statewide the size of the 2020 basketball event. This assumption is made because no additional estimate of loss is included in the analysis for a general tourism decrease. Even a small reduction in the rate of growth of general tourism would be greater than the $3.9 million state and local tax loss assumed. The 2018 Annual Report of the St. Louis Convention Center highlights[ix] 19 of the roughly 100 conventions it reports each year. The total rooms booked for those conventions is 20,490 rooms booked. That is higher than the number of rooms booked reported in the cities that hosted the same round of basketball in 2019. In addition, the estimate does not include any estimate of local convention surtaxes or fees. The estimate is therefore quite conservative.

Table 6 - Estimated loss to State and Local Funds for 1 event

	1 event	5 events
Economic Activity lost	($9,741,968)	($48,709,839)
State Sales tax		
GR (3%)	($292,259)	($1,461,295)
Dedicated taxes (1.225%)	($119,339)	($596,696)
subtotal state taxes	($411,598)	($2,057,991)
Local Sales tax (3.88%)	($377,988)	($1,889,942)
Total loss	($789,586)	($3,947,932)

AMERICAN OVERSIGHT

Reference footnotes

[i] Wikipedia background: https://en.wikipedia.org/wiki/2015%E2%80%9316_University_of_Missouri_protests

[ii] Wikipedia background: https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act_(Indiana)

[iii] Wikipedia background: https://en.wikipedia.org/wiki/Public_Facilities_Privacy_%26_Security_Act

[iv] Associated Press: https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html

[v] Boycotts to Missouri and other states: https://wjla.com/news/nation-world/calls-to-boycott-alabama-georgia-missouri-over-restrictive-abortion-laws

[vi] General Motors Vision Statement 2017 on corporate website: https://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2018/jun/0612-sustainability.html

[vii] State of Missouri: Executive Budget for FY 2020: https://oa.mo.gov/sites/default/files/FY_2020_EB_Social_Services.pdf

[viii] Should the federal government not penalize the state for the entire amount of Medicaid, even a small percentage reduction to the Medicaid federal funds could have a substantial amount of impact, especially if it is targeted to women's health care.

[ix] St. Louis Convention and Visitors Commission 2018 Annual Report: https://explorestlouis.com/wp-content/uploads/2018/09/Annual-Report-2018.pdf

AMERICAN OVERSIGHT

Kip Kendrick, State Representative, District 45, Ranking Member House Budget Committee provided the following information:

AMERICAN OVERSIGHT

CAPITOL OFFICE
201 West Capitol Avenue
Room 101B
Jefferson City, MO 65101-6806
(573) 751-4189
kip.kendrick@house.mo.gov

COMMITTEES:
Budget
Ethics
Higher Education
Subcommittee on Appropriations-Education
Special Committee on Government Oversight

KIP KENDRICK
State Representative
District 45

RECEIVED
JUN 12 2019
STATE AUDITOR'S OFFICE

June 12, 2019

Dear Auditor Galloway:

I write to request that, in any fiscal note you prepare for any proposed petition pertaining to HB 126, your office incorporates the information and considerations contained in the fiscal note prepared for the final version of that legislation. For your reference, this fiscal note was identified for the General Assembly with reference number L.R. No. 0461-18. This fiscal note reflects the understanding and agreement of the General Assembly of the estimated impact of this bill upon the state budget at the time HB 126 was Truly Agreed To and Finally Passed. A copy of L.R. No. 0461-18 is attached for your reference.

Sincerely,

Kip Kendrick
State Representative, District 45
Ranking Member House Budget Committee

AMERICAN OVERSIGHT

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0461-18
Bill No.: SS for SCS for HB 126
Subject: Abortion
Type: Original
Date: May 16, 2019

Bill Summary: This proposal requires the use of a fetal heartbeat detection test prior to an abortion and prohibits an abortion is a fetal heartbeat is detected.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	$0	$0	(Could exceed $1,400,000)	(Could exceed $4,900,000)
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**(Could exceed $1,400,000)**	**(Could exceed $4,900,000)**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 14 pages.

AMERICAN OVERSIGHT

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Federal	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
Total Estimated Net Effect on All Federal Funds	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Total Estimated Net Effect on FTE	**0**	**0**	**0**	**0**

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Local Government	**$0**	**$0**	**$0**	**$0**

AMERICAN OVERSIGHT

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints of less than 1 hour, **Oversight** was unable to receive some of the agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

§135.630 Pregnancy Resource Center Tax Credit

Oversight notes according to the Tax Credit Analysis submitted by the Department of Social Services regarding this program, the Pregnancy Resource Center tax credit program had the following activity;

	FY 2016	FY 20167	FY 2018	FY 2019 (projected)	FY 2020 (projected)
Certificates Issued	4,363	4,628	4,416	4,400	5,400
Amount Authorized	$2,499,442	$2,443,386	$2,499,394	$2,500,000	$3,500,000
Amount Issued	$2,499,442	$2,443,386	$2,499,394	$2,500,000	$3,500,000
Amount Redeemed	$1,845,875	$2,183,505	$2,094,375	$2,000,000	$3,000,000

Amount Outstanding - $2,346,957 Amount Authorized but Unissued - 0

Oversight notes the pregnancy resource center tax credit program currently has a $2.5 million annual cap. The cap is scheduled to increase to $3.5 million starting July 1, 2019. Also, if the amount of tax credits redeemed in a fiscal year is less than the cumulative amount, the difference shall be carried over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax credits that may be authorized in that fiscal year or years. Therefore, adding unused credits from the previous year(s), the cap in any given year past FY 2019 could well exceed $3.5 million. The tax credit is scheduled to sunset on December 31, 2024, unless extended. In response to similar legislation this year, DOR confirmed that this tax credit is a first come first served credit and they have not had to apportion the credit.

Oversight notes the pregnancy resource center tax credit program allows a taxpayer to receive a tax credit up to 50% of the contribution they make to a pregnancy resource center. Currently a pregnancy resource center can provide counseling, emotional and material support to a client but are prohibited from providing childbirth or abortion services.

In response to similar legislation filed this year, SB 204, officials at the **Department of Revenue** assumed this proposed section increases the amount of tax credit awarded to taxpayers from 50 percent of their contribution to the pregnancy resource centers to 70 percent of their contribution to pregnancy resource centers.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

During the 2018 Regular Session; HB 1288 increased the pregnancy resource tax credit cap to $3.5 million. This proposed legislation removes this cap, along with the sunset provisions. The Department in FY18 redeemed a total of $2,094,375 in the Pregnancy Resource Center tax credit, which consisted of credits at 50 percent of the contribution amount. If the tax credit award is increased from 50 percent of the contribution to 70 percent of the contribution, the Department estimates, based on FY18 redemption data, redemptions could increase by $1,047,152 for a total redemption amount of $3,141,527. The Pregnancy Resource Tax Credit, though, is limited to the tax liability of the taxpayer. Thus, it is unknown whether such increase in redemptions would occur in full.

Oversight notes this proposal allows facilities that offer services under the Alternatives to Abortion program to qualify for the pregnancy resource center. Oversight assumes this could expand the number of pregnancy resource centers that are eligible to distribute this tax credit. However, Oversight will not reflect a fiscal impact from this change alone.

Oversight notes that starting January 1, 2021 (FY 2021) this proposal increases the amount of the credit from 50% of the contribution to 70% of the contribution. Increasing the tax credit amount could encourage additional taxpayers to participate in the program. At 50%, the $3.5 million cap would generate $7,000,000 in contributions. This proposal would increase the credit rate to 70% and therefore, cost the state $4,900,000 ($7 million x 70%) in credits. This could result in an additional $1,400,000 ($4.9 m - $3.5 m) in credits per year. Oversight will show an impact of could exceed $1.4 million annually starting in FY 2022 (when calendar year 2021 tax returns are filed).

Oversight notes this proposal also would remove the sunset language from the pregnancy resource center tax credit. Since this program is to sunset on December 31, 2024, removal of the sunset would continue this credit past FY 2025. Oversight will show the impact as a loss of state revenues of could exceed $4.9 million annually starting in FY 2026 (current $3.5 m cap + $1.4 m increase in participation).

Oversight notes with the combination of;

- expanding the definition of pregnancy resource centers;
- increasing the percentage of the credit; and
- removing the cap

would increase the utilization of the credit and Oversight will show all impacts as Could exceed the estimates provided above.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§§188.010 and 188.017 - Right to Life of the Unborn Child Act

Oversight notes, in response to the previous version of this proposal, the **Department of Corrections (DOC)** stated the proposal would not have a direct fiscal impact on their organization.

Oversight notes in response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** stated according to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility (located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If this bill is enacted, the St. Louis facility closes. However, women will only have to drive a few more miles to Illinois, where abortions are legal.

Currently, there are three laws concerning abortion that contain penalties for violation (§188.080.001 - Class A misdemeanor; §188.080.002 - Class B felony; and §188.075.001 - Class A misdemeanor). No convictions of these statutes occurred in FY 2016 - 2018, even with the paucity of abortion facilities in the state. For these reasons, it is expected that enactment of this bill will have no fiscal impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight assumes there will be no fiscal impact to the DOC for fiscal note purposes.

Oversight notes, in response to the previous version of this proposal, the **Department of Social Services (DSS)** has stated the proposal would not have a direct fiscal impact on their organization.

In response to legislation with similar provisions banning abortions except in medical emergencies (SB 345), officials from the **Department of Social Services (DSS)** stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. (See the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019, Pub. L. No. 115-245, §§506-07, 132 Stat. 2981 (2018).)

AMERICAN OVERSIGHT

ASSUMPTION (continued)

In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (Stangler vs. Shalala, 1994 WL 764104 (W.D.Mo 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

Oversight notes in response to HB 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over $7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services.

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortions were paid for in FY 2016 that resulted from rape and incest.

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Oversight contacted the DSS and requested a letter be obtained from the Centers for Medicare and Medicaid (CMS) services stating whether the provisions of 188.026.3 would result in the loss of federal funding. DSS believes it is unlikely CMS will provide such a letter. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from $0 to (Unknown).

§§188.015 and 188.038 - Prohibition on selective abortions

In response to similar legislation (HB 771), officials from the **Department of Health and Senior Services (DHSS)** assumed the provisions of these sections would have no fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

In response to similar legislation (HB 771), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** stated these provisions are anticipated to have no fiscal impact on the DIFP. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight notes, in response to similar legislation (HB 771), the **Office of Attorney General**, the **Department of Social Services** and the **Office of State Courts Administrator** stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§188.018 - Unconstitutionality of provisions

Oversight assumes the provisions of this section will have no fiscal impact on state agencies.

§188.026 - Missouri stands for the unborn act

Oversight assumes the provisions of this proposal will have no fiscal impact on state departments.

§188.027 - Printed materials to include information on causing pain

In response to legislation from this current session relating to printed materials (HB 252), officials from the **Department of Health and Senior Services (DHSS)** assumed the proposal would have no fiscal impact on their organization.

Oversight notes that from conversations with DHSS officials the department states they already have a surplus of the printed materials required by this proposal stored in their warehouse. In addition, DHSS states that the required materials are posted on their website and can be printed by clinics/providers when necessary. It is further assumed by DHSS officials that if someone needed the required materials to be sent to them, the clinic/provider would bear the mailing costs. Therefore, this proposal is not expected to have a fiscal impact on the DHSS.

§188.028 - Consent for minor to obtain an abortion

In response to similar legislation (HB 127), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform the work associated with the proposal with existing staff and resources.

Oversight notes, in response to similar legislation (HB 127), the **Department of Health and Senior Services**, the **Department of Social Services** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

HW-C:LR:OD

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§188.033 - Out-of-state abortions accompanied by printed materials

In response to similar legislation (HB 282), officials from the **Department of Health and Senior Services (DHSS)** assumed the proposal would have no fiscal impact on their organization.

Oversight notes that from conversations with DHSS officials the department states they already have a surplus of the printed materials required by this proposal stored in their warehouse. In addition, DHSS states that the required materials are posted on their website and can be printed by clinics/providers when necessary. It is further assumed by DHSS officials that if someone needed the required materials to be sent to them, the clinic/provider would bear the mailing costs. Therefore, this proposal is not expected to have a fiscal impact on the DHSS.

Oversight notes, in response to similar legislation (HB 282), the **Office of Attorney General, the Department of Social Services, the Office of State Courts Administrator** and **St. Louis County** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

§§188.043 and 188.044 - Malpractice and tail insurance

In response to similar legislation (SCS HB 126), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** stated this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Oversight assumes the DIFP will be able to perform the additional duties required by this proposal with existing personnel and resources. Oversight will reflect a zero fiscal impact for the DIFP for fiscal note purposes.

§§188.056, 188.057, and 188.058 - No abortions performed except in medical emergencies

Oversight notes the provisions of these sections provide that no abortion will be performed upon a woman at eight, fourteen or eighteen weeks gestational age or later, except in cases of medical emergencies. Oversight assumes these provisions would have no fiscal impact on state agencies.

Bill as a whole

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Oversight assumes the DIFP will be able to perform the additional duties required by this proposal with existing personnel and resources. Oversight will reflect a zero fiscal impact for the DIFP for fiscal note purposes.

Officials from the **Missouri Office of Prosecution Services** have stated the proposal would not have a fiscal impact on their organization. However, the creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Oversight notes that the **Department of Corrections**, the **Department of Public Safety, Missouri State Highway Patrol**, the **Office of State Courts Administrator**, the **Office of State Public Defender** and **Legislative Research** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

§188.375 - Late-term pain-capable unborn child protection act

Oversight notes in response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** stated according to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility (located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If this bill is enacted, the St. Louis facility closes. However, women will only have to drive a few more miles to Illinois, where abortions are legal.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Currently, there are three laws concerning abortion that contain penalties for violation (§188.080.001 - Class A misdemeanor; §188.080.002 - Class B felony; and §188.075.001 - Class A misdemeanor). No convictions of these statutes occurred in FY 2016 - 2018, even with the paucity of abortion facilities in the state. For these reasons, it is expected that enactment of this bill will have no fiscal impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight assumes there will be no fiscal impact to the DOC for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Department of Social Services (DSS)** state the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. (See PL 114-113, 114-223 and PL 114-254.) In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (Stangler vs. Shalala, 1994 WL 764104 (W.D.Mo 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

This legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over $7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services. To continue covering services in SFY 2020 to Medicaid participants, the State of Missouri would need an additional $7,408,762,188 in General Revenue to account for the reduction in Federal matching funds. A 2.4% medical inflation rate was used for FY 2020, FY 2021 and FY 2022.

SFY 2020: GR - $7,408,762,188, FED - 0, OTHER - 0, Total: $7,408,762,188
SFY 2021: GR - $7,586,572,481, FED - 0, OTHER - 0, Total: $7,586,572,481
SFY 2022: GR - $7,768,650,220, FED - 0, OTHER - 0, Total: $7,768,650,220

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortion were paid for in FY 2016 that resulted from rape and incest.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from $0 to (Unknown)

In response to similar legislation (SB 139), officials from the **Department of Health and Senior Services (DHSS)** stated §188.026.1-2 of the proposed legislation requires a physician performing an abortion to conduct a fetal heartbeat determination, and a record of the results of the fetal heartbeat determination exam to be included in the woman's medical record. The DHSS, Division of Regulation and Licensure, Section for Health Standards and Licensure (HSL) is responsible for regulating abortion facilities. This will require two additional steps to be added to the survey process to ensure the physician performing the abortion conducts a fetal heartbeat determination exam, and the medical record includes documentation of the fetal heartbeat determination. It is assumed that these new questions will require less than 30 additional minutes per survey, at the three abortion facilities in Missouri, for a total of one and one-half hours of additional work a year. These surveys are conducted by a Health Facilities Nursing Consultant. The average hourly rate for this position is $26.05, so the additional cost of these additional questions is $39.08 annually (1.5 hours x 26.05).

In addition, §188.052.2(4) of the proposed legislation states that the time, date, method, and results of the fetal heartbeat detection test performed prior to an abortion shall be captured in the individual complication report. This would require DHSS, Division of Community and Public Health (DCPH), to make minor revisions to the Complication Report for Post-Abortion Care form that is posted on the DHSS website, and would also require minor changes to the DHSS database used to capture this information. Both of these revisions could be completed by current staff. Forms are not printed, therefore, DCPH would not incur any cost to print revised forms.

The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DHSS will be able to perform the additional duties prescribed in this bill with current staff and resources and will present no fiscal impact to the DHSS for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact on the DIFP. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DIFP can perform the additional duties required by this proposal with existing personnel and resources.

Oversight notes the provisions of §188.026.4 provide that if a physician fails to conduct a fetal heartbeat detection test prior to the performance or inducement of an abortion, he/she will be subject to having his/her license application rejected, revoked, or suspended by the state board of registration for the healing arts for a period of six months and shall be subject to a fine of one thousand dollars.

Per DHSS's 2016 Annual Report (most current available), 4,562 abortions were performed in Missouri. Per www.steadyhealth.com, fetal heartbeats can usually be detected around 6-7 weeks, although it can take up to 10 weeks for the heartbeat to be heard. Other online information indicated a doctor can usually detect the baby's heartbeat at 9-10 weeks, although sometimes it takes 12 weeks for it to be easily detected. For purposes of this fiscal note, Oversight assumed a fetal heartbeat would be detected after 9-10 weeks. According to DHSS's report, 1,323 abortions (29%) were performed after the 9-10 week period of time.

Oversight notes, per DHSS's response, there are three facilities in Missouri which perform abortions. With the limited number of facilities providing abortion services, Oversight assumes there would be a limited number of physicians required to comply with the provisions of this the proposal. Therefore, for fiscal note purposes, Oversight is not presenting potential fine revenue; however, any fine revenue collected would be deposited in the State School Moneys Fund (0616).

Oversight notes, in response to similar legislation (SB 139), the **Office of State Courts Administrator (OSCA)** stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for OSCA.

AMERICAN OVERSIGHT

FISCAL IMPACT - State Government	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
GENERAL REVENUE FUND				
Cost - DOR §135.630 removing the cap and sunset language from the pregnancy resource center	$0	$0	(Could exceed $1,400,000)	(Could exceed $4,900,000)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	**$0**	**$0**	**(Could exceed $1,400,000)**	**(Could exceed $4,900,000)**
FEDERAL FUNDS				
Loss - DSS (§188.026) A potential reduction in federal funding if Missouri is found to be non-compliant with federal law	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

FISCAL IMPACT - Local Government	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
	$0	**$0**	**$0**	**$0**

AMERICAN OVERSIGHT

FISCAL IMPACT - Small Business

This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide services to MO HealthNet recipients through these health care providers.

FISCAL DESCRIPTION

This proposal modifies provisions relating to abortion and the pregnancy resource center tax credit.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Revenue
Legislative Research
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender

Kyle Rieman
Director
May 16, 2019

Ross Strope
Assistant Director
May 16, 2019

HW-C:LR:OD

AMERICAN OVERSIGHT

Sarah W. Martin, 11th Ward Alderwoman, Lyda Krewson, Mayor, Annie Rice, 8th Ward Alderwoman, Dan Guenther, 9th Ward Alderman, Larry Arnowitz, 12th Ward Alderman, Cara Spencer, 20th Ward Alderwoman, Bret Narayan, 24th Ward Alderman, Shane Cohn, 25th Ward Alderman, and Heather Navarro, 28th Ward Alderwoman from City of St. Louis provided the following information:

AMERICAN OVERSIGHT

BOARD OF ALDERMEN

CITY OF SAINT LOUIS
MISSOURI

Sarah Wood Martin
Alderwoman, 11th Ward

--COMMITTEES--
Engrossment Rules, Resolutions & Credentials
Health & Human Services
Parks & Environmental Matters
Streets, Traffic & Refuse

June 11, 2019

Office of the Missouri State Auditor
Auditor Nicole Galloway
Capitol Building, Suite 121
P.O. Box 869
Jefferson City, Missouri 65102

Dear Madam Auditor Galloway,

We write to you as elected officials representing a portion of the state's largest economy. Please consider this correspondence a request of a cost overview analysis to determine the potential financial impact of the Missouri Legislature's passage of House Bill 126.

The Saint Louis region generates nearly half of Missouri's revenue, bringing in over $30 million in sales tax revenue. According to Missouri's Department of Economic Development, "The St. Louis region boasts one of America's great metropolises in the Gateway City, with almost ten Fortune 500 firms, world-class museums, restaurants, shopping, and sports (Cardinal baseball and Blues Hockey). Leading industries include retail trade, professional and technical services, construction, food services and administrative and support services such as Edward Jones, Enterprise Rent-A-Car, AG Edwards and Anheuser-Busch."

We already know from the previous legislation, discriminatory laws in Missouri and other states have negative financial impacts. In 2016, when the Missouri Legislature attempted to discriminate against our LGBT neighbors we heard widespread criticism from the business community about how this law would have made Missouri an unattractive place to do business. House Bill 126 has the same effect. Discrimination, in any form, is detrimental to the hiring abilities and financial bottom line of our major industries. Allowing HB 126 to become law will spark backlash against our state. We could face economic boycotts and travel advisories as our residents push back against this unconstitutional law. This is not unprecedented in Missouri- we need look no further than the NAACP's issuance of a travel advisory in 2017 warning visitors who travel to our state that they may face discrimination. Right now, we can look to states like Georgia to see legislation similar to HB 126 has triggered a boycott from leading artists and entertainers costing the state millions. We cannot suffer another blow to our economic development.

Room 230, City Hall • 1200 Market Street • St. Louis, MO 63103 • (314) 622-3756
martins@stlouis-mo.gov

AMERICAN OVERSIGHT

These types of discriminatory laws have a broad impact. Potential students have announced they will no longer consider Missouri's top higher education institutes. These same institutions have research facilities that will have to contend with the best and the brightest looking to work elsewhere. Our convention center will be competing to attract conferences and entertainment with cities in other more inclusive states. Corporations rooted in Saint Louis and those looking to relocate have already denounced discriminatory laws citing the difficulty of competing for top talent.

The Legislature's Fiscal Oversight Division reports the fiscal impact of this fully implemented legislation on General Revenue in 2026 could exceed $4,900,000. Our state also stands to lose $7.2B in Medicaid funding should this measure become law. This number was determined quickly and without a full response from all departments. We know this legislation will have severe financial consequences for our city. We ask you to consider those costs in your analysis of referenda seeking to repeal HB 126 that will come before your office for review.

Sincerely,

Mayor Lyda Krewson
8th Ward Alderwoman Annie Rice
9th Ward Alderman Dan Guenther
11th Ward Alderwoman Sarah W. Martin
12th Ward Alderman Larry Arnowitz
20th Ward Alderwoman Cara Spencer
24th Ward Alderman Bret Narayan
25th Ward Alderman Shane Cohn
28th Ward Alderwoman Heather Navarro

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from the **Attorney General's office,** the **Secretary of State's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, State Technical College of Missouri, University of Missouri, St. Louis Community College,** and **Missouri Life Sciences Research Board.**

Fiscal Note Summary

Revenues from state sources may decrease by at least $4.9 million annually and federal Medicaid revenues may decrease by an unknown amount, up to $7.2 billion annually. The Public Defender's Office anticipates increased costs of an unknown amount to defend women's medical actions after conception. Local governmental entities anticipate a significant negative impact.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
Cc: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Corrigan, William[William.Corrigan@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Wed 3/29/2023 8:50:11 AM (UTC-05:00)
Subject: Fwd: For reference and comparison, attached is what the previous state auditor - Nicole Galloway - submitted as her fiscal note and fiscal note summary on HB 126 (Missouri's pro-life law) in 2019, the subject of a referendum attempt that year
image001.jpg
Missouri State Auditor's Office Fiscal Note - 20-R001.pdf

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: March 28, 2023 at 11:59:31 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: For reference and comparison, attached is what the previous state auditor - Nicole Galloway - submitted as her fiscal note and fiscal note summary on HB 126 (Missouri's pro-life law) in 2019, the subject of a referendum attempt that year

Ray,
For reference and comparison, attached is what the previous state auditor – Nicole Galloway – submitted as her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a referendum that year.Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum attempt on HB 126 (Missouri's pro-life law enacted in 2019).
Sam
Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

AMERICAN OVERSIGHT

To: Green, Maddie[Maddie.Green@ago.mo.gov]; Senior Leadership Team[seniorleadershipteam@ago.mo.gov]
Cc: Noteboom, Grace[Grace.Noteboom@ago.mo.gov]
From: Atkins, Jay[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1502E6E18E4545A38D80CC0069F63728-ATKINS, JAMES]
Sent: Mon 7/10/2023 12:16:50 PM (UTC-05:00)
Subject: RE: Bailey's Brief: July 2023

Really great content this month!Thanks Maddie and Grace for all your hard work on this!

Jay Atkins | Chief of Staff
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-7890
James.Atkins@ago.mo.gov

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Monday, July 10, 2023 11:03 AM
To: Senior Leadership Team <seniorleadershipteam@ago.mo.gov>
Cc: Noteboom, Grace <Grace.Noteboom@ago.mo.gov>
Subject: FW: Bailey's Brief: July 2023

Team,
Below is our July edition of Bailey's Brief, which was released Saturday morning to our subscribers. I'll have a printed copy at our staff meeting tomorrow morning. Grace has been doing a great job putting these together every month!
If you haven't yet subscribed to receive our external newsletter, you can do so here: http://eepurl.com/iq7G46.
Best,

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: Missouri Attorney General's Office <newsletter@ago.mo.gov>
Sent: Saturday, July 8, 2023 1:02 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Bailey's Brief: July 2023

View this email in your browser

Attorney General Bailey greets Fredericktown Chief of Police Eric Hovis at a meeting with local prosecutors and law enforcement officers in Southeast Missouri.

AMERICAN OVERSIGHT

More about *Missouri v. Biden*sources you trust

AG Bailey joins Fox Business
AG Bailey joins Watch on Washington
AG Bailey breaks down the case so far

AG Bailey joinsFox News
AG Bailey joins Blaze TV
AGjoinsFox and Friends First

Missouri Attorney General Andrew Bailey announced Wednesday that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

AMERICAN OVERSIGHT

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The judge specifically found:

- "[V]irtually all of the free speech suppressed was conservative free speech."
- At least 22 times, the White House engaged in "unrelenting pressure" against tech companies."White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied."
- "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019."
- Facebook suppressed information at the demand of the White House, the FBI, and other federal agents even though the information "did not violate Facebook's policies" and thus ordinarily would not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
- Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
- After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
- The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
- The Department of Homeland Security "met with social-media companies to both inform and pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
- DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
- DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
- Federal defendants did not just censor speech directly; they also caused social media

AMERICAN OVERSIGHT

companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech."

- Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing more than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read here:
https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

Assistant attorneys general listen to a presentation about jury selection. An important part of this process, "voir dire," allows attorneys to question prospective jurors about their backgrounds and potential biases in order to select a fair and impartial jury. It is one of the many skills the participants of AGO Trial Academy refined throughout the week.

Required for all new assistant attorneys general, AGO Trial Academy features presentations and practice workshops facilitated by top trial lawyers in Missouri. At the end of the week, participants flex their new skills in mock trials at multiple court locations in Jefferson City.

AMERICAN OVERSIGHT

ATTORNEY GENERAL BAILEY LANDS TWO COURT VICTORIES IN EFFORTS TO PROTECT UNBORN CHILDREN

READ MORE

ATTORNEY GENERAL BAILEY HOSTS DOBBS DONATION DRIVE TO SUPPORT WOMEN AND CHILDREN ACROSS THE NATION

READ MORE

Attorney General Bailey joins***Digging In***Missouri Farm Bureau President Garrett Hawkinsdiscuss Waters of the United States (WOTUS),Clean Water Act, and what the recent U.S. Supreme Court decision,*Sackett vs. EPA*, means for Missouri farmers & ranchers.

AG BAILEYCONTRACTOR FOR FRAUD IN HOWARD AND COOPER COUNTIES

ATTORNEY GENERAL BAILEY WARNS MISSOURI FARMERS AND RANCHERS OF HAY SCAMS

AMERICAN OVERSIGHT

READ MORE

READ MORE

ATTORNEY GENERALFOR REMOVAL OF IRON COUNTY SHERIFF

AG BAILEY ANNOUNCES $102.5 MILLION SETTLEMENT WITH OPIOID TREATMENT DRUG MAKER

READ MORE

READ MORE

AG BAILEY ON THE AIRWAVES

Attorney Generaljoined
Joe Paggsthe Joe Paggs
Show to discuss his goals

AMERICAN OVERSIGHT

as Attorney General of Missouri.

WATCH HERE

Want to hear more?

AG Bailey joins Pete Mundo on KCMO 103.7 FM
AG Bailey joins Del Walmsley on 97.1 FM
AG Bailey joins Mark Reardon on 97.1 FM

ATTORNEY GENERAL BAILEY CHALLENGES CALIFORNIA TRUCK BAN

READ MORE

ATTORNEY GENERAL BAILEY CHALLENGES CALIFORNIA DEFACTO HANDGUN

READ MORE

Attorney General Andrew Bailey meets with local prosecutors and law enforcement officers in Henry County on June 9, 2023, to discuss how the AGO and law enforcement agencies across the state can partner together to make our state a safer place for Missouri families to live and grow. Attorney General Bailey is dedicated to supporting local law enforcement agencies and prosecutors to fulfil our role in Missouri's criminal justice system.

AMERICAN OVERSIGHT

GET LIVE UPDATES FROM AG BAILEY

BROWSE OUR NEWS ARCHIVES

This email was sent to maddie.green@ago.mo.gov

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

AMERICAN OVERSIGHT

To: Senior Leadership Team[seniorleadershipteam@ago.mo.gov]
Cc: Noteboom, Grace[Grace.Noteboom@ago.mo.gov]
From: Green, Maddie[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C60F962FBD5146489D22328FB86106E8-MCMILLIAN, MADDIE]
Sent: Mon 7/10/2023 11:03:15 AM (UTC-05:00)
Subject: FW: Bailey's Brief: July 2023

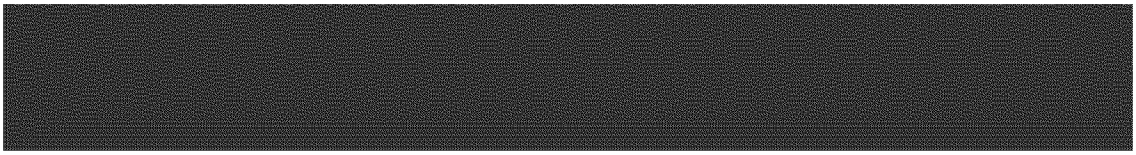
Team,
Below is our July edition of Bailey's Brief, which was released Saturday morning to our subscribers. I'll have a printed copy at our staff meeting tomorrow morning. Grace has been doing a great job putting these together every month!
If you haven't yet subscribed to receive our external newsletter, you can do so here: http://eepurl.com/iq7G46.
Best,

Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: Missouri Attorney General's Office <newsletter@ago.mo.gov>
Sent: Saturday, July 8, 2023 1:02 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: Bailey's Brief: July 2023

View this email in your browser

Attorney General Bailey greets Fredericktown Chief of Police Eric Hovis at a meeting with local prosecutors and law enforcement officers in Southeast Missouri.





AMERICAN OVERSIGHT

AG Bailey joins Fox Business
AG Bailey joins Watch on Washington
AG Bailey breaks down the case so far

AG Bailey joinsFox News
AG Bailey joins Blaze TV
AGjoinsFox and Friends First

Missouri Attorney General Andrew Bailey announced Wednesday that the United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.

The judge had harsh words for the federal officials. He noted that this is "the most massive attack against free speech in United States' history," that the Biden administration has "blatantly ignored the First Amendment's right to free speech," and that the Biden administration "almost exclusively targeted conservative speech."

Attorney General Bailey's motion for preliminary injunction, which he filed with Louisiana Attorney General Jeff Landry, highlighted over 1,400 facts from more than 20,000 pages of evidence exposing the vast censorship enterprise coordinated across multiples agencies within the federal government. The Court's order comes a mere two weeks after Attorney General Bailey testified before Congress on the dangers this enterprise poses to Americans' right to free speech.

"We filed this landmark lawsuit against dozens of officials in the federal government to stop the biggest violation of the First Amendment in our nation's history,today's court order is a huge win for the right to freely speak without government censorship,"**said Attorney General Bailey**. "We must build a wall of separation between tech and state to preserve our First Amendment right to free, fair, and open debate. Missouri will continue to lead the way in the fight to defend our most fundamental freedoms."

In the order, the Court recognized the States' evidence of unconscionable federal censorship activities. The judge specifically found:

- "[V]irtually all of the free speech suppressed was conservative free speech."
- At least 22 times, the White House engaged in "unrelenting pressure" against tech companies."White House Defendants engaged in coercion to induce social-media companies to suppress free speech." "The White House Defendants made it very clear to

AMERICAN OVERSIGHT

social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied."

- "[T]he Hunter Biden laptop story was real, and not mere Russian disinformation," and the "FBI's failure to alert social-media companies" to this fact "is particularly troubling" after the FBI had falsely suggested to social-media companies that the Hunter Biden laptop story was fake. "After the Hunter Biden laptop story broke on October 14, 2020, [FBI agent Laura] Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019."
- Facebook suppressed information at the demand of the White House, the FBI, and other federal agents even though the information "did not violate Facebook's policies" and thus ordinarily would not have been suppressed. "Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines 'that does not contain actionable misinformation.'"
- Former White House Press Secretary Jen Psaki issued a "threat of 'legal consequences'" to social media companies "if they do not censor misinformation more aggressively."
- After President Biden accused social media companies of "killing people," Facebook emailed the Surgeon General to say "it's not great to be accused of killing people" and to say Facebook was "keen to find a way to deescalate." Social media platforms then met with the Surgeon General. "After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests."
- The "motivation" of Dr. Anthony Fauci and other defendants was specifically "a 'take down' of protected free speech."
- The Department of Homeland Security "met with social-media companies to both inform and pressure them to censor content protected by the First Amendment." It then "expanded the word 'infrastructure' in its terminology to include 'cognitive' infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media."
- DHS "Defendants believe they had a mandate to control the process of acquiring knowledge."
- DHS helped create a pseudo-private organization "to get around unclear legal authorities, including very real First Amendment questions."
- Federal defendants did not just censor speech directly; they also caused social media companies to change their policies. They "used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech."
- Although much of the past suppression involved COVID and elections, federal officials "have also shown a willingness to do it with regard to other issues, such as gas prices, parody speech, calling the President a liar, climate change, gender, and abortion" as well as political criticism about "the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine."

AMERICAN OVERSIGHT

*Missouri v. Biden*filed by the attorneys general of Missouri and Louisiana on May 5, 2022. The Court granted their motion for discovery on July 12, 2022, clearing the way for Missouri and Louisiana to gather documents and depose witnesses from the Biden Administration.

Missouri and Louisiana deposed top-ranking officials in the federal government under oath, including Dr. Anthony Fauci, FBI Special Agent Elvis Chan, Eric Waldo of the Surgeon General's Office, Carol Crawford of the CDC, Brian Scully of the Cybersecurity and Infrastructure Security Agency, and Daniel Kimmage of the State Department.

General Bailey and General Landry filed their motion for preliminary injunction on March 6, 2023, citing more than 1,400 facts showing that top officials in the federal government coerced and colluded with big tech social media companies to violate Americans' right to free speech.

The judge's order granting Missouri and Louisiana's motion for preliminary injunction today can be read here:
https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf?sfvrsn=dd807c2_2

Assistant attorneys general listen to a presentation about jury selection. An important part of this process, "voir dire," allows attorneys to question prospective jurors about their backgrounds and potential biases in order to select a fair and impartial jury. It is one of the many skills the participants of AGO Trial Academy refined throughout the week.

Required for all new assistant attorneys general, AGO Trial Academy features presentations and practice workshops facilitated by top trial lawyers in Missouri. At the end of the week, participants flex their new skills in mock trials at multiple court locations in Jefferson City.

AMERICAN OVERSIGHT

BAILEY LANDS TWO COURT VICTORIES IN EFFORTS TO PROTECT UNBORN CHILDREN

READ MORE

HOSTS DOBBS DONATION DRIVE TO SUPPORT WOMEN AND CHILDREN ACROSS THE NATION

READ MORE

Attorney General Bailey joins***Digging In***Missouri Farm Bureau President Garrett Hawkinsdiscuss Waters of the United States (WOTUS),Clean Water Act, and what the recent U.S. Supreme Court decision,*Sackett vs. EPA*, means for Missouri farmers & ranchers.

AG BAILEYCONTRACTOR FOR FRAUD IN HOWARD AND COOPER COUNTIES

READ MORE

ATTORNEY GENERAL BAILEY WARNS MISSOURI FARMERS AND RANCHERS OF HAY SCAMS

READ MORE

AMERICAN OVERSIGHT

ATTORNEY GENERALFOR REMOVAL OF IRON COUNTY SHERIFF

READ MORE

AG BAILEY ANNOUNCES $102.5 MILLION SETTLEMENT WITH OPIOID TREATMENT DRUG MAKER

READ MORE

AG BAILEY ON THE AIRWAVES

Attorney Generaljoined Joe Paggsthe Joe Paggs Show to discuss his goals as Attorney General of Missouri.

WATCH HERE

Want to hear more?

AG Bailey joins Pete Mundo on KCMO 103.7 FM
AG Bailey joins Del Walmsley on 97.1 FM
AG Bailey joins Mark Reardon on 97.1 FM

AMERICAN OVERSIGHT

ATTORNEY GENERAL BAILEY CHALLENGES CALIFORNIA TRUCK BAN

READ MORE

ATTORNEY GENERAL BAILEY CHALLENGES CALIFORNIA DEFACTO HANDGUN

READ MORE

Attorney General Andrew Bailey meets with local prosecutors and law enforcement officers in Henry County on June 9, 2023, to discuss how the AGO and law enforcement agencies across the state can partner together to make our state a safer place for Missouri families to live and grow. Attorney General Bailey is dedicated to supporting local law enforcement agencies and prosecutors to fulfil our role in Missouri's criminal justice system.

GET LIVE UPDATES FROM AG BAILEY

BROWSE OUR NEWS ARCHIVES

AMERICAN OVERSIGHT

This email was sent to maddie.green@ago.mo.gov

*why did I get this?*unsubscribe from this listupdate subscription preferences

Missouri Attorney General's Office · 221 W High St · Jefferson City, MO 65101-1516 · USA

AMERICAN OVERSIGHT

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

State of Missouri, ex rel., Dr. Anna Fitz-James,	)	
	)	
Relator/Petitioner,	)	
	)	
v.	)	CaseNo. 23AC-CC02800
	)	
Andrew Bailey, in his official capacity, et al.,	)	
	)	
Respondents.	)	

JUDGMENT

FACTS

On March 8, 2023, Relator Dr. Anna Fitz-James ("Relator")[1] submitted to Secretary of State John Ashcroft ("Secretary of State") eleven initiative petitions, each of which, if approved by the voters, would amend the Missouri Constitution to confer a constitutional right to have an abortion. Each of the eleven petitions contain clauses that specified that either no government funding was required[2], no government funding was required other than as required by federal law[3], or remained silent as to government funding altogether[4].

---

[1] Dr. Fitz-James seeks a writ of mandamus or, in the alternative, declaratory judgment. Because this Court concludes that this case lies in mandamus, she will be referred to as Relator.

[2] Initiatives 2024-079, 2024-081, 2024-084, 2024-085, 2024-087 specified that no government funding was required.

[3] Initiative 2024-077 specified no government funding was required, other than as required by federal law.

[4] Initiatives 2024-078, 2024-080, 2024-082, 2042-083, and 2024-086 contained no provisions pertaining to government funding.

AMERICAN OVERSIGHT

The Secretary of State assigned these eleven initiatives numbers 2024-077, 2024-078, 2024-079, 2024-080, 2024-081, 2024-082, 2024-083, 2024-084, 2024-085, 2024-086, and 2024-087. On March 9, 2023, the Secretary of State sent a copy of each initiative's sample sheet to Attorney General Andrew Bailey ("Attorney General") and State Auditor Scott Fitzpatrick ("Auditor") and posted the text of each initiative conspicuously on his website. On March 20, 2023, the Attorney General approved each initiative as to form, and the Secretary of State thereafter approved each initiative as to form.

In preparing the fiscal note and fiscal note summary, the Auditor followed the procedure which has remained substantially the same and has been used in drafting all fiscal notes and fiscal note summaries for at least the last decade. The Auditor availed himself of the option set forth in Section 116.175.1, RSMo, to consult with state and local government entities that might be affected by the proposal, in addition to accepting submissions from any proponent or opponent of the proposed measure who wished to provide one, to determine the estimated costs or savings, if any, created by the initiatives. The Auditor sent copies of the proposed ballot initiative to sixty state and local governmental entities, requesting the entities review the same and provide information regarding the estimated costs or savings, if any, of the proposed initiative.

AMERICAN OVERSIGHT

The Auditor requested submissions from the Attorney General's Office[5], the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Commerce and Insurance, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Missouri Department of the National Guard, the Department of Social Services, the Governor's Office, the Missouri House of Representatives, the Department of Conservation, the Department of Transportation, the Office of Administration, the Office of State Courts Administrator, the Missouri Senate, the Secretary of State's Office, the Office of the State Public Defender, the State Treasurer's Office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kansas City, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St.

[5] On March 16, 2023, officials from the Attorney General's Office provided a separate fiscal response for each of the eleven initiatives that indicated they expect to the extent the enactment of the proposed measures would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources, however, if the enactment were to result in substantial additional litigation, they may be required to request additional appropriations.

AMERICAN OVERSIGHT

Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, and St. Louis Community College. In addition to the solicited submissions, the Auditor also accepts any and all submissions provided by any other governmental entity, proponents, opponents, and members of the public. The Auditor then recorded the responses received in the fiscal note and determined from these responses the estimated costs or savings, if any, of the proposed ballot measures.

The entity tasked with managing the state's Medicaid program, the Department of Social Services ("DSS"), as well as the Department of Mental Health ("DMH"), and the Department of Health and Senior Services ("DHSS"), the two other state agencies with exposure to the Medicaid program, indicated they did not anticipate a fiscal impact, other than an unknown impact related to regulating abortion facilities submitted by DHSS. No other state department, nor the Attorney General, provided a response that indicated any of the initiatives would jeopardize the state's federal Medicaid funding.

One local government, Greene County, submitted a potential impact of $51,000, based on that county's estimation that it would immediately suffer a

AMERICAN OVERSIGHT

$51,000 fiscal loss due to the anticipated abortion of approximately 135 future citizens. All other responsive counties reported they anticipated no fiscal impact, a response that conflicted with the assessment of Greene County. The State Auditor's Office included the fiscal impact reported by Greene County and indicated the amount of their response was the lowest expected cost to local governments.

Opponents of the initiative provided submissions indicating they believed some or all of the state's Medicaid funding could be withheld by the federal government if the initiatives became law. Opponents also argued the initiatives could result in reduced tax revenues to the state, although no analysis was provided indicating the amount of tax revenue opponents believed would be lost. Based on his experience in state government, his overall knowledge and understanding of the state budget and Medicaid funding, and a review of pertinent case law, the Auditor concluded the funding provisions of each initiative petition did not run afoul of federal Medicaid funding requirements, the state's federal Medicaid funding was not at risk, and that it would not be reasonable to say it was in the fiscal note summary. The Auditor received no submissions of estimated fiscal impact from any proponents of the proposed initiatives.

On March 29, 2023, the Auditor forwarded to the Attorney General a fiscal note and fiscal note summary for each initiative. While each fiscal note contained slight differences due to the initiatives not being completely identical, the fiscal note

AMERICAN OVERSIGHT

summary produced for each of the eleven initiatives was identical. The fiscal note summary produced by the Auditor for each of the eleven initiatives stated: "State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of ***at least*** $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue." (emphasis added).

On April 7, 2023, the Attorney General sent identical letters to the Secretary of State, expressing his belief that each of the eleven initiatives were facially unconstitutional and would create a substantial economic cost to the state, asserting his belief that the state stood to lose up to $12.5 billion in federal Medicaid funding.

On April 10, 2023, the Attorney General sent eleven identical Attorney General opinions to the Auditor stating his disagreement with all eleven of the Auditor's fiscal note summaries. The Attorney General disputed the Auditor's assessment of each of the proposed initiatives and opined that the fiscal note summary should include a cost estimate much higher than that reached by the Auditor. The Attorney General claimed the fiscal note summaries were legally deficient because they contained inadequate and divergent submissions from local governmental entities and that two state agencies had provided inadequate submissions concerning impact to state governmental operations. The Attorney General objected to the Auditor not extrapolating the economic analysis of Greene

AMERICAN OVERSIGHT

County to every county in the state, and further claimed DSS and the Department of Revenue ("DOR"), both of whom reported to the Auditor that the measures would have no fiscal impact, failed to adequately assess the impact of the initiatives to their operations. The Attorney General believed the initiatives put the state's federal Medicaid funding at risk, and the Auditor should have included verbatim the responses submitted by opponents, some of which alleged estimated economic costs as high as $6.9 trillion dollars.

Upon receipt of the Attorney General's April 10, 2023, opinions returning the fiscal note summaries for revision, based on the Attorney General's representations regarding the massive potential costs of the measures, the Auditor conducted additional consultations with the governmental entities referenced by the Attorney General in his opinions. Specifically, the Auditor consulted with the Director of DSS[6], the Director of MO Healthnet, and the Director of DOR. After consideration of the contents of the Attorney General's opinions relevant to their agencies, each entity reiterated they did not anticipate a fiscal impact. No state agency submitted any response that indicated any of the initiatives would jeopardize the state's federal Medicaid funding, and no state agency changed its original response after reviewing and considering the allegations of unstated fiscal impact asserted by the Attorney General. After this further review, the Auditor determined the Attorney General was

[6] The then Acting Director of DSS has since been elevated to full status Director of DSS.

AMERICAN OVERSIGHT

mistaken and there was no basis for altering the cost estimates contained in any of the eleven fiscal note summaries.

On April 21, 2023, the Auditor sent the Attorney General a written analysis, supported by legal citations, explaining in detail why the Attorney General's fiscal assumptions pertaining to the state's Medicaid funding were legally unsound. This written analysis with legal support further explained that the Attorney General's understanding of the process for drafting fiscal note summaries was erroneous and based on a misunderstanding of the Attorney General's role in the fiscal note summary process. The Auditor resubmitted his original fiscal notes and fiscal note summaries to the Attorney General for approval of their legal content and form.

On April 24, 2023, the Attorney General approved the eleven summary statements prepared by the Secretary of State for each of the initiatives and forwarded his approval to the Secretary of State. In these Attorney General opinions, the Attorney General approved the legal content and form of the proposed summary statements, stating that they were each a concise statement, not exceeding one hundred words, in the form of a question using language that was neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.

On May 1, 2023, the Attorney General again refused to approve the fiscal note summary as to each initiative. The Attorney General did not respond to or otherwise

AMERICAN OVERSIGHT

dispute the Auditor's legal analysis and explanation regarding how federal Medicaid funding requirements, the Hyde Amendment[7], the Weldon Amendment[8], state laws prohibiting government funding of abortion, and the provisions of the proposed initiatives would intertwine and co-exist and not result in additional risk to the state's Medicaid funding. Nor did the Attorney General respond to or dispute the Auditor's legal analysis and explanation regarding the process of drafting a fiscal note summary and the Auditor's discretion in determining what should be included in a fiscal note summary. The Attorney General simply stated that his April 10, 2023, opinions explained his reasons for his rejection, and he refused to forward his approval for any of the eleven initiatives.

While the Secretary of State has been in possession of the official summary statement for each of the eleven initiatives since April 24, 2023, without a fiscal note or an approved fiscal note summary, the Secretary of State is unable to certify the official ballot title for any of the proposed measures as required by Section 116.180, RSMo.

---

[7] The Hyde Amendment is a funding restriction included by Congress in their annual appropriations. In its current form, the amendment provides that no covered funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion," except "if the pregnancy is the result of an act of rape or incest; or . . . 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." CONSOLIDATED APPROPRIATIONS ACT, 2023, PL 117-328, December 29, 2022, 136 Stat. 4459, 4908.

[8] The Weldon Amendment stands for the proposition that health care providers cannot be required to provide coverage for abortion services and bars federal funding by the United States Department of Health and Human Services to any federal agencies or programs, or state or local governments, that discriminate against health care plans that do not include coverage for abortion procedures.

AMERICAN OVERSIGHT

On May 4, 2023, Relator filed a Petition for Writ of Mandamus and Declaratory Judgment. Relator asserts that with no certified official ballot title, she is unable to begin collecting signatures, and without the requisite amount of signatures, her measures cannot appear on the ballot. Relator also contends that without a certified official ballot title, she is unable to challenge the Secretary of State's summary statement for each initiative as insufficient and unfair, and that she must ask the court for different summary statements before she may begin collecting signatures on the initiatives to which the ultimate ballot title is affixed. Relator asserts time is of the essence because each day certification of the official ballot title is delayed, the time within which to collect signatures shortens, increasing the resources required to obtain enough signatures to qualify for an appearance on the 2024 ballot.

Relator asks this court to issue a writ of mandamus directing the Attorney General to approve the fiscal note summary produced by the Auditor for each of the eleven initiative petitions at issue. Alternatively, Relator asked the court to issue a writ of mandamus directing the Auditor to deliver to the Secretary of State the fiscal note summaries for the initiatives as written and requiring the Secretary of State to certify a ballot title for each of the proposed measures. In the absence of relief via either of the requested writs, Relator asked the court to enter a declaratory judgment

AMERICAN OVERSIGHT

that any or all of Sections 116.040, 116.050, 116.175, 116.180, 116.190, 116.332, and 116.334, RSMo, are unconstitutional on their face or as applied.

On May 17, 2023, this court entered preliminary writs as to Respondents, requiring each of them to file their pleading to Relator's petition on or before May 31, 2023. Each Respondent timely responded and in addition, the Secretary of State filed a Motion to Quash the Preliminary Writ and Dismiss Relator's claims against him, asserting that because he had not yet received a fiscal note with an approved fiscal note summary for inclusion in the ballot title, his duty under Section 116.180, RSMo, to certify the official ballot title had not yet been triggered.

On June 7, 2023, the matter was called for argument on pending motions. Petitioner, Dr. Anna Fitz-James, appeared through her attorneys, Anthony Rothert and Tori Schafer. Respondents Attorney General Andrew Bailey and Secretary of State John Ashcroft appeared through their attorneys, Jason Lewis and Samuel Freedlund.[9] Respondent State Auditor Scott Fitzpatrick appeared through his attorneys, Robert Tillman and Leslie Korte. The parties announced ready and argument was heard.

After consideration of the arguments of Relator and the Secretary of State, the court sustained the Secretary of State's Motion to Quash and dismissed the Secretary of State from this action. The matter was submitted on stipulated facts. After hearing

[9] Attorney Ray Wagner also appeared for the Attorney General, but he presented no arguments and he has not formally entered his appearance in this case.

AMERICAN OVERSIGHT

arguments from Relator, the Attorney General, and the Auditor on the substance of Relator's petition, the court took the matter under advisement. The matter is now fully submitted and ready for the court's review. After considerations of the evidence, the arguments of counsel and the authorities cited to the Court, the Court enters its findings.

DISCUSSION

Count I

The crux of this legal dispute hinges on the meaning of the phrase "legal content", as used in Section 116.175.4, RSMo. Relator and the Auditor assert that "legal content", as used in Section 116.175.4, RSMo, means the measure's estimated cost or savings, if any, to state or local governmental entities. The Attorney General asserts "legal content" means the exclusion of argumentative and prejudicial language in the fiscal note summary, and that if cost information received from opponents is not included verbatim by the Auditor, regardless of whether those estimates are reasonable, the legal content is inherently argumentative and prejudicial to voters. The Attorney General further argues the fiscal note summary is defective because the Auditor has not extrapolated the fiscal impact assumptions of a single county (Greene County) across all the counties in the state, nor discarded the fiscal assessments of DSS and DOR. The Attorney General has not raised any

AMERICAN OVERSIGHT

specific challenges to the language used in the Auditor's summaries, only a general disagreement as to the estimated cost of the measures.

The only requirements for a fiscal note or fiscal note summary are located in Section 116.175.3, RSMo. That section states:

> The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.

Section 116.175.3, RSMo. "The primary rule of statutory interpretation is to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute." *Kelly v. Marvin's Midtown Chiropractic, LLC*, 351 S.W.3d 833, 836 (Mo. App. W.D. 2011). The only content required to be included in a fiscal note summary is a measure's estimated cost or savings, if any, to state or local government entities. It is therefore reasonable to conclude that the "legal content" referenced in Section 116.175.4, RSMo, is the statement of the estimated cost or savings, if any, to state or local governmental entities required by Section 116.175.3, RSMo.

The Attorney General asserts the fiscal note summaries include argumentative and prejudicial language, however the prohibition on the use of such language goes to the required form of a fiscal note summary, not it's legal content. This finding is

AMERICAN OVERSIGHT

bolstered by the fact that Section 116.175.3 breaks the requirements of the fiscal note summaries drafted by the auditor into two sentences. The first sentence discusses the content required to be included in a fiscal note summary. The second sentence of Section 116.175.3 includes the prohibition on the use of argumentative or prejudicial language, and also specifies the fifty-word limit imposed on a fiscal note summary, which is clearly an issue of form. Regardless, the Attorney General's argument still fails, as the language of the fiscal note summaries are neither argumentative nor prejudicial.

Argumentative or prejudicial language is approbatory or pejorative language used purposefully to incite either a preference or disdain for the estimated costs or savings of a proposed measure. Other than the disputed actual amount of the cost of the proposed measures, the Attorney General does not set forth any other language included in the fiscal note summaries that he alleges is argumentative or prejudicial. He does not like the fiscal conclusion reached by the Auditor, and believes that because the Auditor's fiscal conclusions are not identical to his own, the Auditor's language is necessarily argumentative and prejudicial.

Yet the law makes clear, the Attorney General is only authorized to review a fiscal note summary to ensure it states the estimated cost or savings, if any, to state and local governments, that it is no more than fifty words (excluding articles), and that it does not contain argumentative or prejudicial language. While the Attorney

AMERICAN OVERSIGHT

General may make a submission regarding the estimated costs or savings he anticipates a measure to have to the Auditor for his consideration in drafting the fiscal note and fiscal note summary, he has no authority under Section 116.175, RSMo, or anywhere else, to conduct an investigation into the underlying fiscal impact of a proposed measure for the purposes of drafting a fiscal note or fiscal note summary. As is the case here, the Attorney General also has no authority to substitute his own judgment for that of the Auditor regarding the estimated cost of a proposed measure as part of his review and approval of its legal content and form. The Attorney General relied on the same opponent submissions that had already been considered by the Auditor to justify returning the fiscal note summaries to the Auditor for revision. He also attempted to substitute his judgment for that of DSS and DOR, both of which submitted fiscal impact responses after evaluating the proposed measures.

Using "his experience in state government and overall knowledge and understanding of business and economic issues," ***the Auditor*** determines the reasonableness of a submission of potential fiscal impact by examining whether it addresses the pertinent issue or diverges from it. *Sinquefield v. Jones*, 435 S.W.3d 674, 679 (Mo. App. W.D. 2014). "***The auditor*** reviews the submissions for completeness, relevance, source identity, and reasonableness." *Id.* (citing *Brown v. Carnahan*, 370 S.W.3d 637, 649 (Mo. banc. 2012) (per curiam)) (emphasis added).

AMERICAN OVERSIGHT

While the Attorney General contends that pursuant to Section 116.175, RSMo, the Auditor must make his demanded revisions to a fiscal note summary, this contention is clearly a misreading of the section. If the Attorney General's demanded revisions would render a fiscal note summary unfair and insufficient in the Auditor's opinion, then the Auditor will be placed into an untenable and absurd positon regarding a challenge to a fiscal note summary pursuant to Section 116.190, RSMo. "When the action challenges the fiscal note or the fiscal note summary prepared by the auditor, the state auditor shall also be named as a party defendant." Section 116.190.2, RSMo. As the party required to be sued in a challenge to a fiscal note summary under Section 116.190, RSMo, the Auditor would be unable to defend the fiscal note summary, because he would be in agreement with the challenger that it was unfair and insufficient. If the Auditor desired to have the fiscal note summary reverted back to his original draft, then under the Attorney General's reading of Section 116.175, RSMo, (which would require the Auditor to write a fiscal note summary that the Auditor believes is inaccurate and misleading), the Auditor would be placed in the peculiar position of having to sue himself to challenge his own fiscal note summary.

This situation is made more preposterous by the fact that if, during such a challenge, the court agreed the fiscal note summary was unfair and insufficient and exercised its discretion to remand it back to the Auditor for revision pursuant to

AMERICAN OVERSIGHT

Section 116.175, RSMo, the Attorney General would once again be in a position to demand revisions to the fiscal note summary, which could result in a potentially never-ending cycle of demanded revisions, challenges, and remands of the fiscal note summary. Likewise, if the Auditor chose to revise a fiscal note summary upon return from the Attorney General for revision, there is no guarantee the revision would be acceptable to the Attorney General, again leading to perpetual requests for revision and delaying Relator the opportunity to exercise her constitutional right to initiative petition in perpetuity.

Over forty years ago, the General Assembly eliminated the Attorney General's statutory authority to draft the fiscal note summary for a proposed initiative, by repealing Section 126.081, RSMo, 1978. Senate Substitute for Senate Bill No. 658, Second Regular Session, 80th General Assembly, 1980.[10] "When the General Assembly amends a statute, the amendment is presumed to effect some change in the existing law." *Marvin's Midtown Chiropractic, LLC*, 351 S.W.3d at 836; *see also Hill v. Ashcroft*, 526 S.W.3d 299, 309 (Mo. App. W.D. 2017) ("When interpreting statutes, courts do not presume that the legislature has enacted a meaningless provision.") (citing *Edwards v. Gerstein*, 237 S.W.3d 580, 581 (Mo. banc 2007)). It is illogical to conclude the General Assembly repealed the Attorney General's

[10] SS SB 658 (1980) gave the committee on state fiscal affairs statutory authority to draft the fiscal note and fiscal note summary. In 1997, the statutory authority to draft the fiscal note and fiscal note summary was given to the Auditor. House Committee Substitute for Senate Bill No. 132, 89th General Assembly, 1997.

AMERICAN OVERSIGHT

authority to draft fiscal note summaries, but silently intended for the Attorney General to be able to substitute his judgment as to the estimated cost or savings of a measure for that of the Auditor's.

To conclude the Attorney General has authority to substitute his judgment for that of the Auditor's as it pertains to the fiscal impact of an initiative petition would render meaningless both the Auditor's role in the fiscal note and fiscal note summary process and the General Assembly's actions in repealing the Attorney General's authority to draft fiscal notes and fiscal note summaries. "[T]he legislature will not be charged with having done a meaningless act." *State v. Swoboda*, 658 S.W.2d 24, 26 (Mo. 1983). There is an absolute absence of authority to conclude the Attorney General is permitted to send the Auditor's fiscal note summary back for revision simply because he disagrees with the Auditor's estimated cost or savings of a proposed measure.

The process for providing Attorney General approval of the legal content and form of a fiscal note summary has worked consistently for over twenty-five years. It is almost a certainty that during that time an Auditor has submitted a fiscal note summary with which an Attorney General disagreed, yet no Attorney General has ever attempted to interpret his role under Section 116.175, RSMo, as one that allows him to reject a fiscal note summary because he disagreed with the substance of the

AMERICAN OVERSIGHT

Auditor's conclusions regarding a proposed measure's estimated cost or savings to state or local governments.

The Auditor is the proper elected official to perform the responsibility of advising the people of Missouri on the anticipated fiscal impact of an initiative petition, as it is the Auditor who has constitutional authority to supervise the receipt and expenditure of public funds. *See* MO. CONST. art. IV, Section 13; *see also Brown*, 370 S.W.3d at 652 (holding Section 116.175, RSMo, was a constitutional delegation of authority to the Auditor and concluding "it is appropriate for the auditor to advise Missouri citizens about the expected fiscal impact of a proposed initiative measure as part of his power 'related to . . . supervising the receipt and expenditure of public funds.'"). The Supreme Court has already noted that besides the Auditor, "no other official has the express power to draft a fiscal note or fiscal note summary." *Brown,* 370 S.W.3d at 652.

Section 116.175, RSMo, sets forth when the Attorney General is required to approve a fiscal note summary. "The attorney general ***shall***, within ten days of receipt of the fiscal note and the fiscal note summary, approve the legal content and form of the fiscal note summary prepared by the state auditor and ***shall*** forward notice of such approval to the state auditor." Section 116.175.4, RSMo, (emphasis added). In this case, the Attorney General returned the fiscal notes and fiscal note summaries to the Auditor for revision, despite the fact that the fiscal note and fiscal

AMERICAN OVERSIGHT

note summaries contained an estimate of cost or savings to state or local governmental entities, were less than fifty words, and did not use argumentative or prejudicial language. After receiving the returned fiscal notes, the Auditor considered the Attorney General's comments, reviewed them in consultation with the applicable state agencies and determined no revision was necessary. This is wholly within the discretion of the Auditor. The Attorney General has no authority to return a fiscal note and fiscal note summary to the Auditor if it complies with Section 116.175, RSMo, much less to do so repeatedly after the Auditor has considered and responded to the Attorney General's concerns and resubmitted the fiscal note and fiscal note summary. *See Am. C.L. Union of Missouri v. Ashcroft*, 577 S.W.3d 881, 900 n. 21 (Mo. App. W.D. 2019) (noting that the predicament of officials taking all of the time allowed by section 116.334.1—thereby leaving little time for signature gathering—underscored why it was beyond the authority of the Secretary of State to derail the referendum process by reviewing a sample sheet for anything beyond its requisite form). It is noteworthy that as of the date of trial, sixty days have elapsed since the Auditor submitted the fiscal note and fiscal note summary for each initiative, depriving the initiative process of fifty days in which to proceed which cannot be recovered.

In his trial brief, the Attorney General asserts the court "is left with nothing other than a simple disagreement between two government officials about whether

AMERICAN OVERSIGHT

50 words correctly summarize an initiative petition and whether a fiscal note is ***sufficient***." *Trial Brief of Attorney General Bailey*, pages 1-2 (emphasis added). The Attorney General labels this dispute as a "disagreement between the Attorney General and the Auditor about whether a proposed fiscal note and fiscal note summary are ***sufficient and fair***." *Id.* at 6 (emphasis added). The Attorney General also asserts that he has expertise to determine whether "the Auditor's submission is legally ***sufficient***" and that he has authority to direct the Auditor to revise a submission "when the Attorney General determines that the submission is legally ***insufficient.***" *Id.* at 14 (emphasis added). The Attorney General claims the language in Section 116.175 directs "that the Attorney General shall 'determine[]' whether or not a fiscal note or fiscal note summary is ***sufficient***." *Id.* at 23 (emphasis added). The Attorney General states he "has returned every fiscal note and fiscal note summary he determined was ***insufficient*** to the Auditor." *Id.* at 24 (emphasis added).

For the Attorney General's argument to succeed, Section 116.175, RSMo, must be read to imply the General Assembly gave him unwritten authority to direct the Auditor to revise a submission when he determines the submission is insufficient or unfair. It is clear this is not what the General Assembly intended because the Attorney General's review of a fiscal note and fiscal note summary is limited to reviewing "legal content and form," as set forth in section 116.175.4, RSMo. The terms "insufficient", "sufficient", "fair" and "unfair" do not appear anywhere in

AMERICAN OVERSIGHT

Section 116.175, RSMo. "[C]ourts 'do not engraft language onto a statute that the legislature did not provide.'" *Hill*, 526 S.W.3d at 309 (quoting *Page v. Scavuzzo*, 412 S.W.3d 263, 267 (Mo. App. W.D. 2013)). Further, where different terms are used in different sections of a chapter, it is reasonable to conclude the legislature intended the terms to have different meaning and effect. *See Am. C.L. Union of Missouri*, 577 S.W.3d at 892 (comparing the plain and unambiguous language of Section 116.332, RSMo, with Section 116.120.1, RSMo, and concluding the Secretary of State's authority to review a referendum petition sample sheet for sufficiency as to form is limited to determining if it is in the form required in Section 116.030, RSMo)*; see also City of Cape Girardeau v. Elmwood Farms, L.P.,* 575 S.W.3d 280, 284 (Mo. App. S.D. 2019)("[I]f different terms are used in different subsections of the statute, then the legislature intended the terms to have a different meaning and effect.").

Challenges to the fiscal note summary for sufficiency and fairness take place within the context of a challenge to the language of an official ballot title under Section 116.190, RSMo. "In section 116.190, the legislature provided a specific means and a specific remedy for challenges to the fiscal note summary." *Knight v. Carnahan,* 282 S.W.3d 9, 20 (Mo. App. W.D. 2009). The Attorney General, like every other citizen, has the right to contest the Auditor's determination regarding the estimated cost of the proposed measure. He must use the proper avenue to do so by bringing an action against the Auditor pursuant to Section 116.190, RSMo,

AMERICAN OVERSIGHT

challenging the fiscal notes and fiscal note summaries as being insufficient or unfair. There is no prohibition precluding him from doing so.

The Attorney General argues that because Section 116.175.5, RSMo, specifies he must "determine" whether the fiscal note or the fiscal note summary satisfies the requirements of Section 116.175, RSMo, his obligations under that section are discretionary, not mandatory. "The word 'shall' generally prescribes a mandatory duty." *State v. Teer,* 275 S.W.3d 258, 261 (Mo. banc. 2009). The Attorney General's duty to approve a fiscal note summary that satisfies the requirements of Section 116.175, RSMo, is mandatory, not discretionary, as the statute makes clear what he "shall" do.

> For more than a century, this Court has held that a ministerial or clerical duty is one in which a certain act is to be performed "upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to [the public official's] judgment or opinion concerning the propriety or impropriety of the act to be performed." *State ex rel. Forgrave v. Hill*, 272 Mo. 206, 198 S.W. 844, 846 (Mo. Banc 1917) (quotation marks omitted).

State ex rel. Alsup v. Kanatzar, 588 S.W.3d 187, 191 (Mo. 2019); *State ex rel. Thomas v. Neeley*, 128 S.W.3d 920, 924 (Mo. App. S.D. 2004) (citing *Jones v. Carnahan*, 965 S.W.2d 209, 213 (Mo. App. W.D. 1998)) ("A ministerial act is one that law directs the public official to perform upon a given set of facts, independent of how the official may regard the propriety or impropriety of performing the act in any particular case."). Section 116.175.4, RSMo, directs the Attorney General to,

AMERICAN OVERSIGHT

within ten days of receipt of the fiscal note and the fiscal note summary, approve the legal content and form of the fiscal note summary and forward notice of such approval to the Auditor.

The role of the Attorney General in this process is not meaningless; as the Attorney General has himself noted, "[t]he legislature has expressly acknowledged that executive branch officials may occasionally make mistakes." *Trial Brief of Attorney General Bailey,* page 37. The Attorney General's review of a fiscal note and fiscal note summary for legal content and form can rightly be interpreted as a safeguard created by the legislature to ensure the fiscal note and fiscal note summary received by the Secretary of State contains the proper legal content and is in the form required by law.

The Attorney General has failed to show the fiscal note summaries do not state estimated costs or savings, if any, to state or local governmental entities, are more than fifty words, excluding articles, or contain argumentative or prejudicial language. Because the fiscal note summary for each of the eleven initiative petitions satisfied the requirements of Section 116.175, RSMo, the Attorney General lacked any statutory authority or discretion to return the fiscal note summaries to the Auditor for revision, and he was required by law to forward his approval of them to the Auditor.

AMERICAN OVERSIGHT

Count II

Relator has not identified any legal duty imposed upon the Auditor that the Auditor has failed to complete. Relator urges the court to construe the statutory scheme to require the Auditor to forward the unapproved fiscal note summaries to the Secretary of State for inclusion in the official ballot title. Yet mandamus is not appropriate to establish a public official's legal obligation to perform a ministerial duty, but only to compel a public official's performance of a ministerial duty that already exists. *See State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. banc. 1994) (citing *State ex rel. Brentwood School Dist. v. State Tax Comm'n*, 589 S.W.2d 613, 614 (Mo. banc 1979)). "[T]he purpose of the writ is to execute, not adjudicate." *State ex rel. Commissioners of the State Tax Comm'n v. Schneider*, 609 S.W.2d 149, 151 (Mo. banc. 1980). Because the Relator has failed to establish the Auditor had a legal obligation to forward to the Secretary of State unapproved fiscal note summaries, mandamus as to the Auditor to compel such action cannot be had.

Count III

Finally, Relator seeks a declaration that certain sections within Chapter 116, RSMo, are unconstitutional on their face. "When courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course." *Missourians to Protect the Initiative Process v. Blunt*, 799

AMERICAN OVERSIGHT

S.W.2d 824, 827 (Mo. 1990). "Statutes that place impediments on the initiative power that are inconsistent with the reservation found in the language of the constitution will be declared unconstitutional." *Id.*

The Attorney General's failure to comply with his duty under Section 116.175.4, RSMo, and not the statutory scheme set forth in Chapter 116, RSMo, has created the current impediment to the certification of an official ballot title for each of the eleven initiatives. Because of the court's findings as to Counts I and II, the court declines to disrupt the statutory scheme set forth in Chapter 116, RSMo, which has served the citizens of Missouri well by providing fiscal estimates for every ballot measure for over twenty-five years. The court finds a discussion of the constitutionality of those statutes is unnecessary.

CONCLUSIONS OF LAW

The Court concludes the Auditor's fiscal note summary for each of the eleven initiative petitions state the measure's estimated costs or savings, if any, to state and local governmental entities, and as such they contain the legal content required by Section 116.175, RSMo. Further, the Auditor's fiscal note summary for each of the eleven initiative petitions contain no more than fifty words, excluding articles, which summarize the fiscal notes in language neither argumentative nor likely to create prejudice either for or against the proposed measures, and as such are in the proper form. Because the fiscal note summaries have the required legal content and are in

AMERICAN OVERSIGHT

the proper form, the Attorney General is required to forward his approval of the summaries to the Auditor. The Attorney General's refusal to approve the Auditor's fiscal note summaries for these eleven initiatives constitutes a failure to perform the ministerial duty imposed on him by Section 116.175.4, RSMo, and mandamus must issue as to Count I in order to afford Relator relief and safeguard the right of initiative which is explicitly reserved by the people of Missouri and enshrined in our Constitution[11].

Relator has failed to establish a legal duty imposed on the Auditor that the Auditor has failed to perform, therefore mandamus against the Auditor as requested in Count II is not appropriate. Because of the Court's conclusions as to Counts I and II, there is no reason to reach the issue of the constitutionality of Sections 116.040, 116.050, 116.175, 116.180, 116.190, 116.332, and 116.334, RSMo.

ORDER AND JUDGMENT

WHEREFORE, based on the forgoing, it is hereby Ordered, Adjudged and Decreed that Relator's Petition for Writ of Mandamus as to Count I is granted. Relator's Petition for Writ of Mandamus as to Count II is denied. It is unnecessary

[11] [11] If mandamus were not available, this Court would direct the same relief by declaratory judgment. *See ACLU of Mo.*, 577 S.W.3d at 898 (holding declaratory judgment is available to determine the parameters of an official's statutory authority and, when such a claim "is meritorious, . . . a permanent (mandatory) injunction, can be invoked to compel the undoing of something wrongfully done" (quotation and citation omitted)).

AMERICAN OVERSIGHT

to rule on Relator's Petition for Declaratory Judgment as to Count III, and said count is therefore dismissed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. A writ of mandamus should issue requiring the Attorney General to, within twenty-four (24) hours of the entry of this order, to approve forthwith the legal content and form of the fiscal note summaries submitted to the Attorney General on March 29, 2023 by the Auditor for initiatives numbered 2024-077, 2024-078, 2024-079, 2024-080, 2024-081, 2024-082, 2024-083, 2024-084, 2024-085, 2024-086, and 2024-087 and to then immediately forward such approval to the Auditor.

II. The relief requested in Count II is denied, and therefore Count II is dismissed.

III. The Court denies Count III and therefore Count III is dismissed.

IT IS SO ORDERED.

6/20/23
Date

Jon E. Beetem, Circuit Judge

AMERICAN OVERSIGHT

IN THE CIRCUIT COURT OF COLE COUNTY

STATE OF MISSOURI

STATE OF MISSOURI ex rel DR. ANNA FITZ-JAMES Relator/Petitioner, v. ANDREW BAILEY, ATTORNEY GENERAL OF THE STATE OF MISSOURI, et. al, Respondents.	Case No. 23AC-CC02800 Division: I

PERMANENT WRIT IN MANDAMUS

THE STATE OF MISSOURI TO:

Respondent Andrew Bailey, in his official capacity as

Attorney General of the State of Missouri,

You are hereby directed, within twenty-four hours of this order, to approve forthwith the legal content and form of the fiscal note summaries submitted to you on March 29, 2023 by the Auditor for initiatives numbered 2024-077, 2024-078, 2024-079, 2024-080, 2024-081, 2024-082, 2024-083, 2024-084, 2024-085, 2024-086 and 2024-087 and to then immediately forward such approval to the Auditor.

SO ORDERED.

Date: June 20, 2023

Jon E. Beetem - Circuit Judge

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI, ET AL.	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R. BIDEN JR., ET AL.	**MAG. JUDGE KAYLA D. MCCLUSKY**

MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION

At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.[1] The Defendants[2] oppose the Motion [Doc. No. 266]. Plaintiffs have filed a reply to the opposition [Doc. No. 276]. The Court heard oral arguments on this Motion on May 26, 2023 [Doc. No. 288]. Amicus Curiae briefs have been filed in this proceeding on behalf of Alliance Defending Freedom,[3] the Buckeye Institute,[4] and Children's Health Defense.[5]

[1] Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty ("Kheriaty"), Dr. Martin Kulldorff ("Kulldorff"), Jim Hoft ("Hoft"), Dr. Jayanta Bhattacharya ("Bhattacharya"), and Jill Hines ("Hines").

[2] Defendants consist of President Joseph R Biden ("President Biden"), Jr, Karine Jean-Pierre ("Jean-Pierre"), Vivek H Murthy ("Murthy"), Xavier Becerra ("Becerra"), Dept of Health & Human Services ("HHS"), Dr. Hugh Auchincloss ("Auchincloss"), National Institute of Allergy & Infectious Diseases ("NIAID"), Centers for Disease Control & Prevention ("CDC"), Alejandro Mayorkas ("Mayorkas"), Dept of Homeland Security ("DHS"), Jen Easterly ("Easterly"), Cybersecurity & Infrastructure Security Agency ("CISA"), Carol Crawford ("Crawford"), United States Census Bureau ("Census Bureau"), U. S. Dept of Commerce ("Commerce"), Robert Silvers ("Silvers"), Samantha Vinograd ("Vinograd"), Ali Zaidi ("Zaidi"), Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Stuart F. Delery ("Delery"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Mina Hsiang ("Hsiang"), U. S. Dept of Justice ("DOJ"), Federal Bureau of Investigation ("FBI"), Laura Dehmlow ("Dehmlow"), Elvis M. Chan ("Chan"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), Katharine Dealy ("Dealy"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), Joshua Peck ("Peck"), Kym Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), Jennifer Shopkorn ("Shopkorn"), U. S. Food & Drug Administration ("FDA"), Erica Jefferson ("Jefferson"), Michael Murray ("Murray"), Brad Kimberly ("Kimberly"), U. S. Dept of State ("State"), Leah Bray ("Bray"), Alexis Frisbie ("Frisbie"), Daniel Kimmage ("Kimmage"), U. S. Dept of Treasury ("Treasury"), Wally Adeyemo ("Adeyemo"), U. S. Election Assistance Commission ("EAC"), Steven Frid ("Frid"), and Kristen Muthig ("Muthig").

[3] [Doc. No. 252]

[4] [Doc. No. 256]

[5] [Doc. No. 262]

AMERICAN OVERSIGHT

I. INTRODUCTION

> I may disapprove of what you say, but I would defend to the death your right to say it.
>
> Evelyn Beatrice Hill, 1906, *The Friends of Voltaire*

This case is about the Free Speech Clause in the First Amendment to the United States Constitution. The explosion of social-media platforms has resulted in unique free speech issues—this is especially true in light of the COVID-19 pandemic. If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States' history. In their attempts to suppress alleged disinformation, the Federal Government, and particularly the Defendants named here, are alleged to have blatantly ignored the First Amendment's right to free speech.

Although the censorship alleged in this case almost exclusively targeted conservative speech, the issues raised herein go beyond party lines. The right to free speech is not a member of any political party and does not hold any political ideology. It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market, whether it be by government itself or private licensee. *Red Lion Broadcasting Co., v. F.C.C.*, 89 S. Ct. 1794, 1806 (1969).

Plaintiffs allege that Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as "disinformation," "misinformation," and "malinformation," have colluded with and/or coerced social-media platforms to suppress disfavored speakers, viewpoints, and content on social-media platforms. Plaintiffs also allege that the suppression constitutes government action, and that it is a violation

AMERICAN OVERSIGHT

of Plaintiffs' freedom of speech under the First Amendment to the United States Constitution. The First Amendment states:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof: **or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (emphasis added).

First Amendment, U.S. Const. amend. I.

The principal function of free speech under the United States' system of government is to invite dispute; it may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. *Texas v. Johnson*, 109 S. Ct. 2533, 2542–43 (1989). Freedom of speech and press is the indispensable condition of nearly every other form of freedom. *Curtis Pub. Co. v. Butts*, 87 S. Ct. 1975, 1986 (1967).

The following quotes reveal the Founding Fathers' thoughts on freedom of speech:

> For if men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.

George Washington, March 15, 1783.

> Whoever would overthrow the liberty of a nation must begin by subduing the free acts of speech.

Benjamin Franklin, *Letters of Silence Dogwood*.

> Reason and free inquiry are the only effectual agents against error.

Thomas Jefferson.

The question does not concern whether speech is conservative, moderate, liberal, progressive, or somewhere in between. What matters is that Americans, despite their views, will not be censored or suppressed by the Government. Other than well-known exceptions

AMERICAN OVERSIGHT

to the Free Speech Clause, all political views and content are protected free speech.

The issues presented to this Court are important and deeply intertwined in the daily lives of the citizens of this country.

II. FACTUAL BACKGROUND

In this case, Plaintiffs allege that Defendants suppressed conservative-leaning free speech, such as: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19's origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns; (4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6) suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden.

Plaintiffs Bhattacharya and Kulldorff are infectious disease epidemiologists and co-authors of The Great Barrington Declaration ("GBD"). The GBD was published on October 4, 2020. The GBD criticized lockdown policies and expressed concern about the damaging physical and mental health impacts of lockdowns. They allege that shortly after being published, the GBD was censored on social media by Google, Facebook, Twitter, and others. Bhattacharya and Kulldorff further allege on October 8, 2020 (four days after publishing the GBD), Dr. Frances Collins, Dr. Fauci, and Cliff Lane proposed together a "take down" of the GBD and followed up with an organized campaign to discredit it.[6]

Dr. Kulldorff additionally alleges he was censored by Twitter on several occasions because of his tweets with content such as "thinking everyone must be vaccinated is scientifically flawed,"

[6] [Doc. No. 10-3 and 10-4]

AMERICAN OVERSIGHT

that masks would not protect people from COVID-19, and other "anti-mask" tweets.[7] Dr. Kulldorff (and Dr. Bhattacharya[8]) further alleges that YouTube removed a March 18, 2021 roundtable discussion in Florida where he and others questioned the appropriateness of requiring young children to wear facemasks.[9] Dr. Kulldorff also alleges that LinkedIn censored him when he reposted a post of a colleague from Iceland on vaccines, for stating that vaccine mandates were dangerous, for posting that natural immunity is stronger than vaccine immunity, and for posting that health care facilities should hire, not fire, nurses.[10]

Plaintiff Jill Hines is Co-Director of Health Freedom Louisiana, a consumer and human rights advocacy organization. Hines alleges she was censored by Defendants because she advocated against the use of masks mandates on young children. She launched an effort called "Reopen Louisiana" on April 16, 2020, to expand Health Freedom Louisiana's reach on social media. Hines alleges Health Freedom Louisiana's social-media page began receiving warnings from Facebook. Hines was suspended on Facebook in January 2022 for sharing a display board that contained Pfizer's preclinical trial data.[11] Additionally, posts about the safety of masking and adverse events from vaccinations, including VAERS data and posts encouraging people to contact their legislature to end the Government's mask mandate, were censored on Facebook and other social-media platforms. Hines alleges that because of the censorship, the reach of Health Freedom Louisiana was reduced from 1.4 million engagements per month to approximately 98,000. Hines also alleges that her personal Facebook page has been censored and restricted for posting content

[7] [Doc. No. 10-4]
[8] [Doc. No. 10-3]
[9] [Id.]
[10] [Id.]
[11] [Doc. No. 10-12]

AMERICAN OVERSIGHT

that is protected free speech. Additionally, Hines alleges that two of their Facebook groups, HFL Group and North Shore HFL, were de-platformed for posting content protected as free speech.[12]

Plaintiff Dr. Kheriaty is a psychiatrist who has taught at several universities and written numerous articles. He had approximately 158,000 Twitter followers in December 2021 and approximately 1,333 LinkedIn connections. Dr. Kheriaty alleges he began experiencing censorship on Twitter and LinkedIn after posting content opposing COVID-19 lockdowns and vaccine mandates. Dr. Kheriaty also alleges that his posts were "shadow banned," meaning that his tweets did not appear in his follower's Twitter feeds. Additionally, a video of an interview of Dr. Kheriaty on the ethics of vaccine mandates was removed from YouTube.[13]

Plaintiff Jim Hoft is the owner and operator of The Gateway Pundit ("GP"), a news website located in St. Louis, Missouri. In connection with the GP, Hoft operates the GP's social-media accounts with Twitter, Facebook, YouTube, and Instagram. The GP's Twitter account previously had over 400,000 followers, the Facebook account had over 650,000 followers, the Instagram account had over 200,000 followers, and the YouTube account had over 98,000 followers.

The GP's Twitter account was suspended on January 2, 2021, again on January 29, 2021, and permanently suspended from Twitter on February 6, 2021. The first suspension was in response to a negative post Hoft made about Dr. Fauci's statement that the COVID-19 vaccine will only block symptoms and not block the infection. The second suspension was because of a post Hoft made about changes to election law in Virginia that allowed late mail-in ballots without postmarks to be counted. Finally, Twitter issued the permanent ban after the GP Twitter account posted video footage from security cameras in Detroit, Michigan from election night 2020, which showed two delivery vans driving to a building at 3:30 a.m. with boxes, which were alleged to

[12] [Id.]
[13] [Doc. No. 10-7]

AMERICAN OVERSIGHT

contain election ballots. Hoft also alleges repeated instances of censorship by Facebook, including warning labels and other restrictions for posts involving COVID-19 and/or election integrity issues during 2020 and 2021.

Hoft further alleges that YouTube censored the GP's videos. YouTube removed a May 14, 2022 video that discussed voter integrity issues in the 2020 election. Hoft has attached as exhibits copies of numerous GP posts censored and/or fact checked. All of the attached examples involve posts relating to COVID-19 or the 2020 election.

In addition to the allegations of the Individual Plaintiffs, the States of Missouri and Louisiana allege extensive censorship by Defendants. The States allege that they have a sovereign and proprietary interest in receiving the free flow of information in public discourse on social-media platforms and in using social-media to inform their citizens of public policy decisions. The States also claim that they have a sovereign interest in protecting their own constitutions, ensuring their citizen's fundamental rights are not subverted by the federal government, and that they have a quasi-sovereign interest in protecting the free-speech rights of their citizens. The States allege that the Defendants have caused harm to the states of Missouri and Louisiana by suppressing and/or censoring the free speech of Missouri, Louisiana, and their citizens.

The Complaint,[14] Amended Complaint,[15] Second Amended Complaint,[16] and Third Amended Complaint[17] allege a total of five counts. They are:

> Count One – Violation of the First Amendment against all Defendants.
>
> Count Two – Action in Excess of Statutory Authority against all Defendants.

[14] [Doc. No. 1]
[15] [Doc. No. 45]
[16] [Doc. No. 84]
[17] [Doc. No. 268]

AMERICAN OVERSIGHT

> Count Three – Violation of the Administrative Procedure Act against HHS, NIAID, CDC, FDA, Peck, Becerra, Murthy, Crawford, Fauci, Galatas, Waldo, Byrd, Choi, Lambert, Dempsey, Muhammed, Jefferson, Murry, and Kimberly.
>
> Count Four – Violation of the Administrative Procedure Act against DHS, CISA, Mayorkas, Easterly, Silvers, Vinograd, Jankowicz, Masterson, Protentis, Hale, Snell, Wyman, and Scully.
>
> Count Five – Violation of the Administrative Procedure Act against the Department of Commerce, Census Bureau, Shopkorn, Schwartz, Molina-Irizarry, and Galemore.

Plaintiffs also ask for this case to be certified as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). For the reasons discussed herein, it is only necessary to address Count One and the Plaintiffs' request for class action certification in this ruling.

The following facts are pertinent to the analysis of whether or not Plaintiffs are entitled to the granting of an injunction.[18]

Plaintiffs assert that since 2018, federal officials, including Defendants, have made public statements and demands to social-media platforms in an effort to induce them to censor disfavored speech and speakers. Beyond that, Plaintiffs argue that Defendants have threatened adverse consequences to social-media companies, such as reform of Section 230 immunity under the Communications Decency Act, antitrust scrutiny/enforcement, increased regulations, and other measures, if those companies refuse to increase censorship. Section 230 of the Communications Decency Act shields social-media companies from liability for actions taken on their websites, and Plaintiffs argue that the threat of repealing Section 230 motivates the social-media companies to comply with Defendants' censorship requests. Plaintiffs also note that Mark Zuckerberg

[18] The Factual Background is this Court's interpretation of the evidence. The Defendants filed a 723-page Response to Findings of Fact [Doc. No. 266-8] which contested the Plaintiffs' interpretation or characterizations of the evidence. At oral argument, the Defendants conceded that they did not dispute the validity or authenticity of the evidence presented.

AMERICAN OVERSIGHT

("Zuckerberg"), the owner of Facebook, has publicly stated that the threat of antitrust enforcement is "an existential threat" to his platform.[19]

A. White House Defendants[20]

Plaintiffs assert that by using emails, public and private messages, public and private meetings, and other means, the White House Defendants have "significantly encouraged" and "coerced" social-media platforms to suppress protected free speech posted on social-media platforms.

(1) On January 23, 2021, three days after President Biden took office, Clarke Humphrey ("Humphrey"), who at the time was the Digital Director for the COVID-19 Response Team, emailed Twitter and requested the removal of an anti-COVID-19 vaccine tweet by Robert F. Kennedy, Jr.[21] Humphrey sent a copy of the email to Rob Flaherty ("Flaherty"), former Deputy Assistant to the President and Director of Digital Strategy, on the email and asked if "we can keep an eye out for tweets that fall in this same genre." The email read, "Hey folks-Wanted to flag the below tweet and am wondering if we can get moving on the process of having it removed ASAP."[22]

(2) On February 6, 2021, Flaherty requested Twitter to remove a parody account linked to Finnegan Biden, Hunter Biden's daughter and President Biden's granddaughter. The request stated, "Cannot stress the degree to which this needs to be resolved immediately," and "Please remove this account immediately."[23] Twitter suspended the parody account within forty-five minutes of Flaherty's request.

---

[19] [Doc. No. 212-3, citing Doc. No. 10-1, at 202]
[20] White House Defendants consists of President Joseph R. Biden ("President Biden"), White House Press Secretary Karine Jean-Pierre ("Jean-Pierre"), Ashley Morse ("Morse"), Deputy Assistant to the President and Director of Digital Strategy Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Stuart F. Delery ("Delery"), Mina Hsiang ("Hsiang"), and Dr. Hugh Auchincloss (Dr. Auchincloss")
[21] [Doc. No. 174-1, Exh. A. at 1]
[22] [Id. at 2]
[23] [Doc. No. 174-1, Exh. A. at 4]

AMERICAN OVERSIGHT

(3) On February 7, 2021, Twitter sent Flaherty a "Twitter's Partner Support Portal" for expedited review of flagging content for censorship. Twitter recommended that Flaherty designate a list of authorized White House staff to enroll in Twitter's Partner Support Portal and explained that when authorized reporters submit a "ticket" using the portal, the requests are "prioritized" automatically. Twitter also stated that it had been "recently bombarded" with censorship requests from the White House and would prefer to have a streamlined process. Twitter noted that "[i]n a given day last week for example, we had more than four different people within the White House reaching out for issues."[24]

(4) On February 8, 2021, Facebook emailed Flaherty, and Humphrey to explain how it had recently expanded its COVID-19 censorship policy to promote authoritative COVID-19 vaccine information and expanded its efforts to remove false claims on Facebook and Instagram about COVID-19, COVID-19 vaccines, and vaccines in general. Flaherty responded within nineteen minutes questioning how many times someone can share false COVID-19 claims before being removed, how many accounts are being flagged versus removed, and how Facebook handles "dubious," but not "provably false," claims.[25] Flaherty demanded more information from Facebook on the new policy that allows Facebook to remove posts that repeatedly share these debunked claims.

(5) On February 9, 2021, Flaherty followed up with Facebook in regard to its COVID-19 policy, accusing Facebook of causing "political violence" spurred by Facebook groups by failing to censor false COVID-19 claims, and suggested having an oral meeting to discuss their policies.[26] Facebook responded the same day and stated that "vaccine-skeptical" content does not

[24] [Doc. No. 174-1 at 3]
[25] [Id. at 5–8]
[26] [Id. at 6–8]

AMERICAN OVERSIGHT

violate Facebook's policies.[27] However, Facebook stated that it will have the content's "distribution reduced" and strong warning labels added, "so fewer people will see the post."[28] In other words, even though "vaccine-skeptical" content did not violate Facebook's policy, the content's distribution was still being reduced by Facebook.

Facebook also informed Flaherty that it was working to censor content that does not violate Facebook's policy in other ways by "preventing posts discouraging vaccines from going viral on our platform" and by using information labels and preventing recommendations for Groups, Pages, and Instagram accounts pushing content discouraging vaccines. Facebook also informed Flaherty that it was relying on the advice of "public health authorities" to determine its COVID-19 censorship policies.[29] Claims that have been "debunked" by public health authorities would be removed from Facebook. Facebook further promised Flaherty it would aggressively enforce the new censorship policies and requested a meeting with Flaherty to speak to Facebook's misinformation team representatives about the latest censorship policies.[30] Facebook also referenced "previous meetings" between the White House and Facebook representatives during the "transition period" (likely referencing the Biden Administration transition).[31]

(6) On February 24, 2021, Facebook emailed Flaherty about "Misinfo Themes" to follow up on his request for COVID and vaccine misinformation themes on Facebook. Some of the misinformation themes Facebook reported seeing were claims of vaccine toxicity, claims about the side effects of vaccines, claims comparing the COVID vaccine to the flu vaccine, and claims downplaying the severity of COVID-19. Flaherty responded by asking for details about

[27] [Id.]
[28] [Id.]
[29] [Id.]
[30] [Id. at 6]
[31] [Id. at 5]

AMERICAN OVERSIGHT

Facebook's actual enforcement practices and for a report on misinformation that was not censored. Specifically, his email read, "Can you give us a sense of volume on these, and some metrics around the scale of removal for each? Can you also give us a sense of misinformation that might be falling outside your removal policies?"[32] Facebook responded that at their upcoming meeting, they "can definitely go into detail on content that doesn't violate like below, but could 'contribute to vaccine hesitancy.'"[33]

(7) On March 1, 2021, Flaherty and Humphrey (along with Joshua Peck ("Peck"), the Health and Human Services' ("HHS") Deputy Assistant Secretary) participated in a meeting with Twitter about misinformation. After the meeting, Twitter emailed those officials to assure the White House that Twitter would increase censorship of "misleading information" on Twitter, stating "[t]hanks again for meeting with us today. As we discussed, we are building on 'our' continued efforts to remove the most harmful COVID-19 'misleading information' from the service."[34]

(8) From May 28, 2021, to July 10, 2021, a senior Meta executive reportedly copied Andrew Slavitt ("Slavitt"), former White House Senior COVID-19 Advisor, on his emails to Surgeon General Murthy ("Murthy"), alerting them that Meta was engaging in censorship of COVID-19 misinformation according to the White House's "requests" and indicating "expanded penalties" for individual Facebook accounts that share misinformation.[35] Meta also stated, "We think there is considerably more we can do in '*partnership*' with you and your team to drive behavior."[36]

---

[32] [Doc. No. 214-9 at 2–3]
[33] [Id.]
[34] [Doc. No. 214-10 at 2, Jones Declaration, #10, Exh. H] SEALED DOCUMENT
[35] [Doc. No. 71-4 at 6–11]
[36] [Id. at 10] (emphasis added)

AMERICAN OVERSIGHT

(9) On March 12, 2021, Facebook emailed Flaherty stating, "Hopefully, this format works for the various teams and audiences within the White House/HHS that may find this data valuable."[37] This email also provided a detailed report and summary regarding survey data on vaccine uptake from January 10 to February 27, 2021.[38]

(10) On March 15, 2021, Flaherty acknowledged receiving Facebook's detailed report and demanded a report from Facebook on a recent Washington Post article that accused Facebook of allowing the spread of information leading to vaccine hesitancy. Flaherty emailed the Washington Post article to Facebook the day before, with the subject line: "You are hiding the ball," and stated "I've been asking you guys pretty directly, over a series of conversations, for a clear accounting of the biggest issues you are seeing on your platform when it comes to vaccine hesitancy and the degree to which borderline content as you define it – is playing a role."[39]

After Facebook denied "hiding the ball," Flaherty followed up by making clear that the White House was seeking more aggressive action on "borderline content."[40] Flaherty referred to a series of meetings with Facebook that were held in response to concerns over "borderline content" and accused Facebook of deceiving the White House about Facebook's "borderline policies."[41] Flaherty also accused Facebook of being the "top driver of vaccine hesitancy."[42] Specifically, his email stated:

> I am not trying to play 'gotcha' with you. We are gravely concerned that your service is one of the top drivers of vaccine hesitancy-period. I will also be the first to acknowledge that borderline content offers no easy solutions. But we want to know that you're trying, we want to know how we can help, and we want to know that you're not playing a shell game with us when we ask you what is going on.

[37] [Doc. No. 174-1 at 9]
[38] [Id.]
[39] [Id. at 11]
[40] [Id. at 11–12]
[41] [Id.]
[42] [Id. at 11]

AMERICAN OVERSIGHT

This would all be a lot easier if you would just be straight with us.[43]

In response to Flaherty's email, Facebook responded, stating: "We obviously have work to do to gain your trust…We are also working to get you useful information that's on the level. That's my job and I take it seriously – I'll continue to do it to the best of my ability, and I'll expect you to hold me accountable."[44]

Slavitt, who was copied on Facebook's email, responded, accusing Facebook of not being straightforward, and added more pressure by stating, "internally, we have been considering our options on what to do about it."[45]

(11) On March 19, 2021, Facebook had an in-person meeting with White House officials, including Flaherty and Slavitt.[46] Facebook followed up on Sunday, March 21, 2021, noting that the White House had demanded a consistent point of contact with Facebook, additional data from Facebook, "Levers for Tackling Vaccine Hesitancy Content," and censorship policies for Meta's platform WhatsApp.[47] Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines "that does not contain actionable misinformation."[48] Facebook also provided a report for the White House on the requested information on WhatsApp policies:

> You asked us about our levers for reducing virality of vaccine hesitancy content. In addition to policies previously discussed, these include the additional changes that were approved last week and that we will be implementing over the coming weeks. As you know, in addition to removing vaccine misinformation, we have been focused on reducing the virality of content discouraging vaccines that do not contain actionable misinformation.[49]

---

[43] [Id. at 11]
[44] [Id. at 11]
[45] [Id. at 10]
[46] [Id. at 15]
[47] [Id.]
[48] [Id. at 15]
[49] [Id. at 15]

AMERICAN OVERSIGHT

On March 22, 2021, Flaherty responded to this email, demanding more detailed information and a plan from Facebook to censor the spread of "vaccine hesitancy" on Facebook.[50] Flaherty also requested more information about and demanded greater censorship by Facebook of "sensational," "vaccine skeptical" content.[51] He also requested more information about WhatsApp regarding vaccine hesitancy.[52] Further, Flaherty seemingly spoke on behalf of the White House and stated that the White House was hoping they (presumably the White House and Facebook) could be "partners here, even if it hasn't worked so far."[53] A meeting was scheduled the following Wednesday between Facebook and White House officials to discuss these issues.

On April 9, 2021, Facebook responded to a long series of detailed questions from Flaherty about how WhatsApp was censoring COVID-19 misinformation. Facebook stated it was "reducing viral activity on our platform" through message-forward limits and other speech-blocking techniques.[54] Facebook also noted it bans accounts that engage in those that seek to exploit COVID-19 misinformation.[55]

Flaherty responded, "I care mostly about what actions and changes you are making to ensure you're not making our country's vaccine hesitancy problem worse," accusing Facebook of being responsible for the Capitol riot on January 6, 2021, and indicating that Facebook would be similarly responsible for COVID-related deaths if it did not censor more information.[56] "You only

[50] [Id.]
[51] [Id.]
[52] [Id.]
[53] [Id. at 14]
[54] [Id. at 17]
[55] [Id. at 17]
[56] [Id. at 17–21]

AMERICAN OVERSIGHT

did this, however, after an election that you helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."[57]

(12) On April 14, 2021, Flaherty demanded the censorship of Fox News hosts Tucker Carlson and Tomi Lahren because the top post about vaccines that day was "Tucker Carlson saying vaccines don't work and Tomi Lahren stating she won't take a vaccine."[58] Flaherty stated, "This is exactly why I want to know what 'Reduction' actually looks like – if 'reduction' means 'pumping our most vaccine hesitant audience with Tucker Carlson saying it does not work' … then…I'm not sure it's reduction!"[59]

Facebook promised the White House a report by the end of the week.[60]

(13) On April 13, 2021, after the temporary halt of the Johnson & Johnson vaccine, the White House was seemingly concerned about the effect this would have on vaccine hesitancy. Flaherty sent to Facebook a series of detailed requests about how Facebook could "amplify" various messages that would help reduce any effects this may have on vaccine hesitancy.[61]

Flaherty also requested that Facebook monitor "misinformation" relating to the Johnson & Johnson pause and demanded from Facebook a detailed report within twenty-four hours. Facebook provided the detailed report the same day.[62] Facebook responded, "Re the J & J news, we're keen to amplify any messaging you want us to project about what this means for people."[63]

(14) Facebook responded to a telephone call from Rowe about how it was censoring information with a six-page report on censorship with explanations and screen shots of sample posts of content that it does and does not censor. The report noted that vaccine hesitancy content

[57] [Id. at 17]
[58] [Id. at 22]
[59] [Id. at 22]
[60] [Id. at 23]
[61] [Id. at 30–31]
[62] [Id. at 31]
[63] [Id. at 31–32]

AMERICAN OVERSIGHT

does not violate Facebook's content-moderation policies, but indicated that Facebook still censors this content by suppressing it in news feeds and algorithms.[64] Other content that Facebook admitted did not violate its policy but may contribute to vaccine hesitancy are: a) sensational or alarmist vaccine misrepresentation; b) disparaging others based on the choice to or not to vaccinate; c) true but shocking claims or personal anecdotes; d) discussing the choice to vaccinate in terms of personal or civil liberties; and e) concerns related to mistrust in institutions or individuals.[65] Facebook noted it censors such content through a "spectrum of levers" that includes concealing the content from other users, "de-boosting" the content, and preventing sharing through "friction."[66] Facebook also mentioned looking forward to tomorrow's meeting "and how we can hopefully partner together."[67]

Other examples of posts that did not violate Facebook's policies but would nonetheless be suppressed included content that originated from the Children's Health Defense, a nonprofit activist group headed by Robert F. Kennedy, Jr. (labeled by Defendants as one of the "Disinformation Dozen").[68]

(15) On April 14, 2021, Slavitt emailed Facebook executive Nick Clegg ("Clegg") with a message expressing displeasure with Facebook's failure to censor Tucker Carlson. Slavitt stated, "Not for nothing but the last time we did this dance, it ended in an insurrection."[69] The subject line was "Tucker Carlson anti-vax message."[70] Clegg responded the same day with a detailed report about the Tucker Carlson post, stating that the post did not qualify for removal under Facebook

[64] [Id. at 24–25]
[65] [Id.]
[66] [Id. at 24–25]
[67] [Id. at 24]
[68] [Id. at 25–27]
[69] [Id. at 34]
[70] Id. at 33]

AMERICAN OVERSIGHT

policy but that the video was being labeled with a pointer to authoritative COVID-19 information, not being recommended to people, and that the video was being "*demoted*."[71]

After Brian Rice ("Rice") of Facebook forwarded the same report on the Tucker Carlson post to Flaherty on April 14, 2021, Flaherty responded to Rice wanting a more detailed explanation of why Facebook had not removed the Tucker Carlson video and questioning how the video had been "demoted" since there were 40,000 shares.[72] Flaherty followed up six minutes later alleging Facebook provided incorrect information through Crowd Tangle.[73]

Two days later, on April 16, 2021, Flaherty demanded immediate answers from Facebook regarding the Tucker Carlson video.[74] Facebook promised to get something to him that night. Facebook followed up on April 21, 2021, with an additional response in regard to an apparent call from Flaherty ("thanks for catching up earlier").[75] Facebook reported the Tucker Carlson content had not violated Facebook's policy, but Facebook gave the video a 50% demotion for seven days and stated that it would continue to demote the video.[76]

(16) On April 21, 2021, Flaherty, Slavitt, and other HHS officials, met with Twitter officials about "Twitter Vaccine Misinfo Briefing." The invite stated the White House would be briefed by Twitter on vaccine information, trends seen generally about vaccine information, the tangible effects seen from recent policy changes, what interventions were being implemented, previous policy changes, and ways the White House could "partner" in product work.[77]

---

[71] [Id. at 36]
[72] [Id. at 33–34]
[73] [Id.]
[74] [Id. at 33]
[75] [Id.]
[76] [Id. at 33, 36]
[77] [Doc. No. 71-7 at 86].

AMERICAN OVERSIGHT

Twitter discovery responses indicated that during the meeting, White House officials wanted to know why Alex Berenson ("Berenson") had not been "kicked off" Twitter.[78] Slavitt suggested Berenson was "the epicenter of disinfo that radiated outwards to the persuadable public."[79] Berenson was suspended thereafter on July 16, 2021, and was permanently de-platformed on August 28, 2021.[80]

(17) Also on April 21, 2021, Flaherty, Slavitt, and Fitzpatrick had a meeting with several YouTube officials. The invitation stated the purpose of this meeting was for the White House to be briefed by YouTube on general trends seen around vaccine misinformation, the effects of YouTube's efforts to combat misinformation, interventions YouTube was trying, and ways the White House can "partner" in product work.[81]

In an April 22, 2021, email, Flaherty provided a recap of the meeting and stated his concern that misinformation on YouTube was "shared at the highest (and I mean the highest) levels of the White House."[82] Flaherty indicated that the White House remains concerned that YouTube is "funneling people into hesitancy and intensifying people's vaccine hesitancy."[83] Flaherty further shared that "we" want to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better.[84] Flaherty again noted vaccine hesitancy was a concern that is shared by the highest ("and I mean the highest") levels of the White House.[85]

Flaherty further indicated that the White House was coordinating with the Stanford Internet Observatory (which was operating the Virality Project): "Stanford" has mentioned that it's recently

[78] [Doc. No. 212-14 at 2–5]
[79] [Id.]
[80] [Doc. No. 212-14, Exh. J, at 2–5]
[81] [Doc. No. 212-15, Exh. K, at 1–4] SEALED DOCUMENT
[82] [Doc. No. 174-1 at 39-40]
[83] [Id.]
[84] [Id.]
[85] [Doc. No. 174-1 at 39–40]

AMERICAN OVERSIGHT

Vaccine Passports and J&J pause-related stuff, but I'm not sure if that reflects what you're seeing."[86] Flaherty praised YouTube for reducing distribution of content: "I believe you said you reduced watch time by 70% on borderline content, which is impressive."[87] However, Flaherty followed up with additional demands for more information from YouTube. Flaherty emphasized that the White House wanted to make sure YouTube's work extends to the broader problem of people viewing "vaccine-hesitant content."[88] Flaherty also suggested regular meetings with YouTube ("Perhaps bi-weekly") as they have done with other "platform partners."[89]

(18) On April 23, 2021, Flaherty sent Facebook an email including a document entitled "Facebook COVID-19 Vaccine Misinformation Brief" ("the Brief"), which indicated that Facebook plays a major role in the spread of COVID vaccine misinformation and found that Facebook's policy and enforcement gaps enable misinformation to spread.[90] The Brief recommended much more aggressive censorship of Facebook's enforcement policies and called for progressively severe penalties. The Brief further recommended Facebook stop distributing anti-vaccine content in News Feed or in group recommendations. The Brief also called for "warning screens" before linking to domains known to promote vaccine misinformation.[91] Flaherty noted sending this Brief was not a White House endorsement of it, but "this is circulating around the building and informing thinking."[92]

On May 1, 2021, Facebook's Clegg sent an email to Slavitt indicating Facebook and the White House met recently to "share research work."[93] Clegg apologized for not catching and

[86] [Id. at 39]
[87] [Id.]
[88] [Doc. No. 214-1 at 39–40]
[89] [Id. at 39–40]
[90] [Doc. No. 214-14 at 2–3]
[91] [Id.]
[92] [Doc. No. 214-14 at 2–3, Jones Declaration]
[93] [Doc. No. 214-1]

AMERICAN OVERSIGHT

censoring three pieces of vaccine content that went viral and promised to censor such content more aggressively in the future:

> I wanted to send you a quick note on the three pieces of vaccine content that were seen by a high number of people before we demoted them. Although they don't violate our community standards, we should have demoted them before they went viral, and this has exposed gaps in our operational and technical process.

Notably, these three pieces of information did not violate Facebook's policies. Clegg told Slavitt that Facebook teams had spent the past twenty-four hours analyzing gaps in Facebook and were making several changes next week.[94]

Clegg listed—in bold—demands that the White House had made in a recent meeting and provided a response to each. The demands were: a) address Non-English mis/disinformation circulating without moderation; b) do not distribute or amplify vaccine hesitancy, and Facebook should end group recommendations for groups with a history of COVID-19 or vaccine misinformation; c) monitor events that host anti-vaccine and COVID disinformation; and d) address twelve accounts that were responsible for 73% of vaccine misinformation.[95] Facebook noted that it was scrutinizing these accounts and censoring them whenever it could, but that most of the content did not violate Facebook's policies.[96] Facebook referred to its new policy as their "Dedicated Vaccine Discouraging Entities."[97] Facebook even suggested that too much censorship might be counterproductive and drive vaccine hesitancy: "Among experts we have consulted, there is a general sense that deleting more expressions of vaccine hesitancy might be more

[94] [Doc. No. 214-1 at ¶ 116].
[95] [Doc. No. 174-1 at 41–42]
[96] [Doc. No. 174-1 at 41–42].
[97] [Id.]

AMERICAN OVERSIGHT

counterproductive to the goal of vaccine uptake because it could prevent hesitant people from talking through their concerns and potentially reinforce the notion that there's a 'cover-up.'"[98]

(19) On May 5, 2021, then-White House Press Secretary Jen Psaki ("Psaki") publicly began pushing Facebook and other social-media platforms to censor COVID-19 misinformation. At a White House Press Conference, Psaki publicly reminded Facebook and other social-media platforms of the threat of "legal consequences" if they do not censor misinformation more aggressively. Psaki further stated: "The President's view is that the major platforms have a responsibility related to the health and safety of all Americans to stop amplifying untrustworthy content, disinformation, and misinformation, especially related to COVID-19 vaccinations and elections."[99] Psaki linked the threat of a "robust anti-trust program" with the White House's censorship demand. "He also supports better privacy protections and a robust anti-trust program. So, his view is that there's more that needs to be done to ensure that this type of misinformation; disinformation; damaging, sometime life-threatening information, is not going out to the American public."[100]

The next day, Flaherty followed up with another email to Facebook and chastised Facebook for not catching various COVID-19 misinformation. Flaherty demanded more information about Facebook's efforts to demote borderline content, stating, "Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach, and how quicky?"[101] Flaherty also criticized Facebook's efforts to censor the "Disinformation Dozen":

[98] [Id. at 42]
[99] [Doc. No. 266-6 at 374]
[100] [Id.]
[101] [Doc. No. 174-1 at 41]

AMERICAN OVERSIGHT

"Seems like your 'dedicated vaccine hesitancy' policy isn't stopping the disinfo-dozen – they're being deemed as not dedicated – so it feels like that problem likely coming over to groups."[102]

Things apparently became tense between the White House and Facebook after that, culminating in Flaherty's July 15, 2021 email to Facebook, in which Flaherty stated: "Are you guys fucking serious? I want an answer on what happened here and I want it today."[103]

(20) On July 15, 2021, things became even more tense between the White House, Facebook, and other social-media platforms. At a joint press conference between Psaki and Surgeon General Murthy to announce the Surgeon General's "Health Advisory on Misinformation,"[104] Psaki announced that Surgeon General Murthy had published an advisory on health misinformation as an urgent public health crisis.[105] Murthy announced: "Fourth, we're saying we expect more from our technology companies. We're asking them to operate with greater transparency and accountability. We're asking them to monitor misinformation more closely. We're asking them to consistently take action against misinformation super-spreaders on their platforms."[106]Psaki further stated, "We are in regular touch with these social-media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team," and "We're flagging problematic posts for Facebook that spread disinformation."[107]

Psaki followed up by stating that the White House's "asks" include four key steps by which social-media companies should: 1) measure and publicly share the impact of misinformation on

[102] [Id.]
[103] [Id. at 55]
[104] [Doc. No. 210-1 at 16 (Waldo Depo, Exh. 10)]
[105] [Id. at 162]
[106] [Doc. No. 10-1 at 370]
[107] [Id. at 376–77]

AMERICAN OVERSIGHT

their platforms; 2) create a robust enforcement strategy; 3) take faster action against harmful posts; and 4) promote quality information sources in their feed algorithms.[108]

The next day, on July 16, 2021, President Biden, after being asked what his message was to social-media platforms when it came to COVID-19, stated, "[T]hey're killing people."[109] Specifically, he stated "Look, the only pandemic we have is among the unvaccinated, and that they're killing people."[110] Psaki stated the actions of censorship Facebook had already conducted were "clearly not sufficient."[111]

Four days later, on July 20, 2021, at a White House Press Conference, White House Communications Director Kate Bedingfield ("Bedingfield") stated that the White House would be announcing whether social-media platforms are legally liable for misinformation spread on their platforms and examining how misinformation fits into the liability protection granted by Section 230 of the Communications Decency Act (which shields social-media platforms from being responsible for posts by third parties on their sites).[112] Bedingfield further stated the administration was reviewing policies that could include amending the Communication Decency Act and that the social-media platforms "should be held accountable."[113]

(21) The public and private pressure from the White House apparently had its intended effect. All twelve members of the "Disinformation Dozen" were censored, and pages, groups, and accounts linked to the Disinformation Dozen were removed.[114]

---

[108] [Id. at 377–78]
[109] [Doc. No. 10-1 at 370]
[110] [Id. at 436–37]
[111] [Doc. No. 10-1 at 446]
[112] [Doc. No. 10-1 at 477–78]
[113] [Id.]
[114] [Doc. No. 10-1 at 483–85]

AMERICAN OVERSIGHT

Twitter suspended Berenson's account within a few hours of President Biden's July 16, 2021 comments. [115] On July 17, 2021, a Facebook official sent an email to Anita B. Dunn ("Dunn"), Senior Advisor to the President, asking for ways to "get back into the White House's good graces" and stated Facebook and the White House were "100% on the same team here in fighting this."[116]

(22) On November 30, 2021, the White House's Christian Tom ("Tom") emailed Twitter requesting that Twitter watch a video of First Lady Jill Biden that had been edited to make it sound as if the First Lady were profanely heckling children while reading to them.[117] Twitter responded within six minutes, agreeing to "escalate with the team for further review."[118] Twitter advised users that the video had been edited for comedic effect. Tom then requested Twitter apply a "Manipulated Media" disclaimer to the video.[119] After Twitter told Tom the video was not subject to labeling under its policy, Tom disputed Twitter's interpretation of its own policy and added Michael LaRosa ("LaRosa"), the First Lady's Press Secretary, into the conversation.[120] Further efforts by Tom and LaRosa to censor the video on December 9, 13, and 17 finally resulted in the video's removal in December 2021.[121]

(23) In January 2022, Facebook reported to Rowe, Murthy, Flaherty, and Slavitt that it had "labeled and demoted" vaccine humor posts whose content could discourage vaccination.[122] Facebook also reported to the White House that it "labeled and 'demoted' posts suggesting natural immunity to a COVID-19 infection is superior to vaccine immunity."[123] In January 2022, Jesse

[115] [Doc. No. 214-12 at 2–5]
[116] [Doc. No. 174-1 at 49]
[117] [Doc. No. 174-1 at 59–67]
[118] [Id.]
[119] [Id.]
[120] [Id.]
[121] [Id. at 59–67]
[122] [Doc. No. 71-3 at 10–11]
[123] [Doc. No. 71-3 at 10–11]

AMERICAN OVERSIGHT

Lee ("Lee") of the White House sent an email accusing Twitter of calling the President a liar in regard to a Presidential tweet.[124]

At a February 1, 2022, White House press conference, Psaki stated that the White House wanted every social-media platform to do more to call out misinformation and disinformation, and to uplift accurate information.[125]

At an April 25, 2022, White House press conference, after being asked to respond to news that Elon Musk may buy Twitter, Psaki again mentioned the threat to social-media companies to amend Section 230 of the Communications Decency Act, linking these threats to social-media platforms' failure to censor misinformation and disinformation.[126]

On June 13, 2022, Flaherty demanded Meta continue to produce periodic COVID-19 insight reports to track COVID-19 misinformation, and he expressed a concern about misinformation regarding the upcoming authorization of COVID-19 vaccines for children under five years of age. Meta agreed to do so on June 22, 2022.[127]

(24) In addition to misinformation regarding COVID-19, the White House also asked social-media companies to censor misinformation regarding climate change, gender discussions, abortion, and economic policy. At an Axios event entitled "A Conversation on Battling Misinformation," held on June 14, 2022, the White House National Climate Advisor Gina McCarthy ("McCarthy") blamed social-media companies for allowing misinformation and disinformation about climate change to spread and explicitly tied these censorship demands with threats of adverse legislation regarding the Communications Decency Act.[128]

---

[124] [Doc. No. 174-1 at 69]
[125] [Doc. No. 10-1 at 501–2]
[126] [Id. at 62–63, ¶¶ 193–197]
[127] [Doc. No. 71-3 at 5–6]
[128] [Doc. No. 214-15]

AMERICAN OVERSIGHT

On June 16, 2022, the White House announced a new task force to target "general misinformation" and disinformation campaigns targeted at women and LBGTQI individuals who are public and political figures, government and civic leaders, activists, and journalists.[129] The June 16, 2022, Memorandum discussed the creation of a task force to reel in "online harassment and abuse" and to develop programs targeting such disinformation campaigns.[130] The Memorandum also called for the Task Force to confer with technology experts and again threatened social-media platforms with adverse legal consequences if the platforms did not censor aggressively enough.[131]

On July 8, 2022, President Biden signed an Executive Order on protecting access to abortion. Section 4(b)(iv) of the order required the Attorney General, the Secretary of HHS, and the Chair of the Federal Trade Commission to address deceptive or fraudulent practices relating to reproductive healthcare services, including those online, and to protect access to accurate information.[132]

On August 11, 2022, Flaherty emailed Twitter to dispute a note added by Twitter to one of President Biden's tweets about gas prices.[133]

(25) On August 23, 2021, Flaherty emailed Facebook requesting a report on how Facebook intended to promote the FDA approval of the Pfizer vaccine. He also stated that the White House would appreciate a "push" and provided suggested language.[134]

[129] [Doc. No. 214-15[
[130] [Id.]
[131] [Doc. No. 214-16]
[132] [Doc. No. 214-18]
[133] [Doc. No. 174-1 at 68]
[134] [Id.]

AMERICAN OVERSIGHT

B. Surgeon General Defendants[135]

Surgeon General Murthy is the Surgeon General of the United States. Eric Waldo ("Waldo") is the Senior Advisor to the Surgeon General and was formerly Chief Engagement Officer for the Surgeon General's office. Waldo's Deposition was taken as part of the allowed Preliminary Injunction-related discovery in this matter.[136]

(1) Waldo was responsible for maintaining the contacts and relationships with representatives of social-media platforms. Waldo did pre-rollout calls with Twitter, Facebook, and Google/YouTube before the Surgeon General's health advisory on misinformation was published on July 15, 2021.[137] Waldo admitted that Murthy used his office to directly advocate for social-media platforms to take stronger actions against health "misinformation" and that those actions involved putting pressure on social-media platforms to reduce the dissemination of health misinformation.[138] Surgeon General Murthy's message was given to social-media platforms both publicly and privately.[139]

(2) At a July 15, 2021 joint press conference between Psaki and Murthy, the two made the comments mentioned previously in II A(19), which publicly called for social-media platforms "to do more" to take action against misinformation super-spreaders.[140] Murthy was directly involved in editing and approving the final work product for the July 15, 2021 health advisory on misinformation.[141] Waldo also admitted that Murthy used his "bully pulpit" to talk about health misinformation and to put public pressure on social-media platforms.[142]

---

[135] Surgeon General Defendants consists of Dr. Vivek H. Murthy ("Murthy") and Katharine Dealy ("Dealy").
[136] [Doc. No. 210]
[137] [Doc. No. 210 at 11, 20]
[138] [Id. at 25, 28]
[139] [Id. at 11, 20, 25, 28]
[140] [Id. at 33–35]
[141] [Waldo depo at 14–17]
[142] [Id. at 29]

AMERICAN OVERSIGHT

(3) Waldo's initial rollout with Facebook was negatively affected because of the public attacks by the White House and Office of the Surgeon General towards Facebook for allowing misinformation to spread.[143] Clegg of Facebook reached out to attempt to request "de-escalation" and "working together" instead of the public pressure.[144] In the call between Clegg and Murthy, Murthy told Clegg he wanted Facebook to do more to censor misinformation on its platforms. Murthy also requested Facebook share data with external researchers about the scope and reach of misinformation on Facebook's platforms to better understand how to have external researchers validate the spread of misinformation.[145] "Data about misinformation" was the topic of conversation in this call; DJ Patil, chief data scientist in the Obama Administration, Murthy, Waldo, and Clegg all participated on the call. The purpose of the call was to demand more information from Facebook about monitoring the spread of misinformation.[146]

(4) One of the "external researchers" that the Office of Surgeon General likely had in mind was Renee DiResta ("DiResta") from the Stanford Internet Observatory, a leading organization of the Virality Project.[147] The Virality Project hosted a "rollout event" for Murthy's July 15, 2021 press conference.[148]

There was coordination between the Office of the Surgeon General and the Virality Project on the launch of Murthy's health advisory.[149] Kyla Fullenwider ("Fullenwider") is the Office of the Surgeon General's key subject-matter expert who worked on the health advisory on misinformation. Fullenwider works for a non-profit contractor, United States' Digital Response.[150]

---

[143] [Id. at 91–94]
[144] [Doc. No. 210 at 95–98]
[145] [Id.]
[146] [Doc. No. 210 at 95–98]
[147]The Virality Project will be discussed later in greater detail.
[148] [Id. at 36–38]
[149] [Id. at 38]
[150] [Id. at 39, 59, 85]

AMERICAN OVERSIGHT

Waldo, Fullenwider, and DiResta were involved in a conference call after the July 15, 2021 press conference where they discussed misinformation.[151] The Office of the Surgeon General anticipated that social-media platforms would feel pressured by the Surgeon General's health advisory.[152]

(5) Waldo and the Office of the Surgeon General received a briefing from the Center for Countering Digital Hate ("CCDH") about the "Disinformation Dozen." CCDH gave a presentation about the Disinformation Dozen and how CCDH measured and determined that the Disinformation Dozen were primarily responsible for a significant amount of online misinformation.[153]

(6) In his deposition, Waldo discussed various phone calls and communications between Defendants and Facebook. In August of 2021, Waldo joined a call with Flaherty and Brian Rice of Facebook.[154] The call was an update by Facebook about the internal action it was taking regarding censorship.[155] Waldo was aware of at least one call between Murthy and Facebook in the period between President Biden's election and assuming office, and he testified that the call was about misinformation.[156] Waldo was also aware of other emails and at least one phone call where Flaherty communicated with Facebook.[157]

(7) The first meeting between the Office of the Surgeon General and social-media platforms occurred on May 25, 2021, between Clegg, Murthy, and Slavitt. The purpose of this call was to introduce Murthy to Clegg. Clegg emailed Murthy with a report of misinformation on Facebook on May 28, 2021.[158]

---

[151] [Id.]
[152] [Id. at 39, 59, 85]
[153] [Id. at 43, 47]
[154] [Id. at 66, 124–25]
[155] [Id. at 66, 124–25]
[156] [Id. at 55–56]
[157] [Id. at 64–65]
[158] [Doc. No. 210-4]

AMERICAN OVERSIGHT

Policy updates about increasing censorship were announced by Facebook on May 27, 2021.[159] The Office of the Surgeon General had a pre-rollout (i.e., before the rollout of the Surgeon General's health advisory on misinformation) call with Twitter and YouTube on July 12 and July 14, 2021.[160] The Office of the Surgeon General had a rollout call with Facebook on July 16, 2021. The July 16 call with Facebook was right after President Biden had made his "[T]hey're killing people" comment (II A (19), above), and it was an "awkward call" according to Waldo.[161]

Another call took place on July 23, 2021, between Murthy, Waldo, DJ Patil, Clegg, and Rice. Clegg shared more about the spread of information and disinformation on Facebook after the meeting. At the meeting, Murthy raised the issue of wanting to have a better understanding of the reach of misinformation and disinformation as it relates to health on Facebook; Murthy often referred to health misinformation in these meetings as "poison."[162] The Surgeon General's health advisory explicitly called for social-media platforms to do more to control the reach of misinformation.[163]

On July 30, 2021, Waldo had a meeting with Google and YouTube representatives. At the meeting, Google and YouTube reported to the Office of the Surgeon General what actions they were taking following the Surgeon General's health advisory on misinformation.[164]

On August 10, 2021, Waldo and Flaherty had a call with Rice calling for Facebook to report to federal officials as to Facebook's actions to remove "disinformation" and to provide details regarding a vaccine misinformation operation Facebook had uncovered.[165]

---

[159] [Id. at 78, Exh. 3]
[160] [Id. at 85]
[161] [Id.]
[162] [Id. at 95–98, 101, 105]
[163] [Id. at 107–08]
[164] [Doc. No. 210-4 at 33]
[165] [Id.]

AMERICAN OVERSIGHT

Another meeting took place between Google/YouTube, Waldo, and Flaherty on September 14, 2021, to discuss a new policy YouTube was working on and to provide the federal officials with an update on YouTube's efforts to combat harmful COVID-19 misinformation on its platform.[166]

(8) After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests. Facebook announced policy updates about censoring misinformation on May 27, 2021, two days after the meeting.[167] As promised, Clegg provided an update on misinformation to the Office of Surgeon General on May 28, 2021, three days after the meeting[168] and began sending bi-weekly COVID content reports on June 14, 2021.[169]

On July 6, 2021, Waldo emailed Twitter to set up the rollout call for the Office of the Surgeon General's health advisory on misinformation and told Twitter that Murthy had been thinking about how to stop the spread of health misinformation; that he knew Twitter's teams were working hard and thinking deeply about the issue; and that he would like to chat over Zoom to discuss.[170] Twitter ultimately publicly endorsed the Office of the Surgeon General's call for greater censorship of health misinformation.[171]

Waldo sent an email to YouTube on July 6, 2021, to set up the rollout call and to state that the Office of the Surgeon General's purpose was to stop the spread of misinformation on social-media platforms.[172] YouTube eventually adopted a new policy on combatting COVID-19

---

[166] [Id. at 129]
[167] [Doc. No. 210-1 at 138]
[168] [Doc. No. 210-5 at 1–2]
[169] [Doc. No. 210-6]
[170] [Doc. No. 210-7 at 145–46]
[171] [Id.]
[172] [Doc. No. 210-8]

AMERICAN OVERSIGHT

misinformation and began providing federal officials with updates on YouTube's efforts to combat the misinformation.[173]

(9) At the July 15, 2021 press conference, Murthy described health misinformation as one of the biggest obstacles to ending the pandemic; insisted that his advisory was on an urgent public health threat; and stated that misinformation poses an imminent threat to the nation's health and takes away the freedom to make informed decisions.[174] Murthy further stated that health disinformation is false, inaccurate, or misleading, based upon the best evidence at the time.[175]

Murthy also stated that people who question mask mandates and decline vaccinations are following misinformation, which results in illnesses and death.[176] Murthy placed specific blame on social-media platforms for allowing "poison" to spread and further called for an "all-of-society approach" to fight health misinformation.[177] Murthy called upon social-media platforms to operate with greater transparency and accountability, to monitor information more clearly, and to "consistently take action against misinformation super-spreaders on their platforms."[178] Notably, Waldo agreed in his deposition that the word "accountable" carries with it the threat of consequences.[179] Murthy further demanded social-media platforms do "much, much, more" and take "aggressive action" against misinformation because the failure to do so is "costing people their lives."[180]

(10) Murthy's July 15, 2021 health advisory on misinformation blamed social-media platforms for the spread of misinformation at an unprecedented speed, and it blamed social-media

[173] [Doc. No. 210-8].
[174] [Doc. No. 210-11]
[175] [Doc. No. 210-11]
[176] [Doc. No. 210-11]
[177] [Id.]
[178] [Id.]
[179] [Id.]
[180] [Id.]

AMERICAN OVERSIGHT

features and algorithms for furthering the spread.[181] The health advisory further called for social-media platforms to enact policy changes to reduce the spread of misinformation, including appropriate legal and regulatory measures.[182]

Under a heading entitled "What Technology Platforms Can Do," the health advisory called for platforms to take a series of steps to increase and enable greater social-media censorship of misinformation, including product changes, changing algorithms to avoid amplifying misinformation, building in "frictions" to reduce the sharing of misinformation, and practicing the early detection of misinformation super-spreaders, along with other measures.[183] The consequences for misinformation would include flagging problematic posts, suppressing the spread of the information, suspension, and permanent de-platforming.[184]

(11) The Office of the Surgeon General collaborated and partnered with the Stanford University Internet Observatory and the Virality Project. Murthy participated in a January 15, 2021 launch of the Virality Project. In his comments, Murthy told the group, "We're asking technology companies to operate with great transparency and accountability so that misinformation does not continue to poison our sharing platforms and we knew the government can play an important role, too."[185]

Murthy expressly mentioned his coordination with DiResta at the Virality Project and expressed his intention to maintain that collaboration. He claimed that he had learned a lot from the Virality Project's work and thanked the Virality Project for being such a great "partner."[186]

[181] [Doc. No. 210-11]
[182] [Id.]
[183] [Id.]
[184] [Id.]
[185] [Doc. No. 210-13, Doc. No. 210, at 206–07].
[186] [Doc. No. 210-1 at 213]

AMERICAN OVERSIGHT

Murthy also stated that the Office of the Surgeon General had been "partnered with" the Stanford Internet Observatory for many months.[187]

(12) After President Biden's "[T]hey're killing people" comment on July 16, 2021, Facebook representatives had "sad faces" according to Waldo. On July 21, 2021, Facebook emailed Waldo and Fullenwider with CrowdTangle data and with "interventions" that created "frictions" with regard to COVID misinformation. The interventions also included limiting forwarding of WhatsApp messages, placing warning labels on fact-checked content, and creating "friction" when someone tries to share these posts on Facebook. Facebook also reported other censorship policy and actions, including censoring content that contributes to the risk of imminent physical harm, permanently banning pages, groups, and accounts that repeatedly broke Facebook's COVID-19 misinformation rules, and reducing the reach of posts, pages, groups, and accounts that share other false claims "that do not violate our policies but may present misleading or sensationalized information about COVID-19 and vaccines."[188]

On July 16, 2021, Clegg emailed Murthy and stated, "I know our teams met today to better understand the scope of what the White House expects of us on misinformation going forward."[189]On July 18, 2021, Clegg messaged Murthy stating "I imagine you and your team are feeling a little aggrieved—as is the [Facebook] team, it's not great to be accused of killing people—but as I said by email, I'm keen to find a way to deescalate and work together collaboratively. I am available to meet/speak whenever suits."[190] As a result of this communication, a meeting was scheduled for July 23, 2021.[191]

[187] [Doc. No. 210-1 at 213]
[188] [Doc. No. 210-15]
[189] [Doc. No. 210-16]
[190] [Doc. No. 210-17]
[191] [Doc. No. 210-18]

AMERICAN OVERSIGHT

At the July 23, 2021 meeting, the Office of the Surgeon General officials were concerned about understanding the reach of Facebook's data.[192] Clegg even sent a follow-up email after the meeting to make sure Murthy saw the steps Facebook had been taking to adjust policies with respect to misinformation and to further address the "disinfo-dozen."[193] Clegg also reported that Facebook had "expanded the group of false claims that we remove, to keep up with recent trends of misinformation that we are seeing."[194] Further, Facebook also agreed to "do more" to censor COVID misinformation, to make its internal data on misinformation available to federal officials, to report back to the Office of the Surgeon General, and to "strive to do all we can to meet our 'shared' goals."[195]

Evidently, the promised information had not been sent to the Office of the Surgeon General by August 6, 2021, so the Office requested the information in a report "within two weeks."[196] The information entitled "How We're Taking Action Against Vaccine Misinformation Superspreaders" was later sent to the Office of the Surgeon General. It detailed a list of censorship actions taken against the "Disinformation Dozen."[197] Clegg followed up with an August 20, 2021 email with a section entitled "Limiting Potentially Harmful Misinformation," which detailed more efforts to censor COVID-19 Misinformation.[198] Facebook continued to report back to Waldo and Flaherty with updates on September 19 and 29 of 2021.[199]

(13) Waldo asked for similar updates from Twitter, Instagram, and Google/YouTube.[200]

---

[192] [Id.]
[193] [Id. at 4–5]
[194] [Id.]
[195] [Id.]
[196] [Doc. No. 210-22 at 1–3]
[197] [Doc. No. 210-21]
[198] [Doc. No. 210-22 at 2]
[199] [Doc. No. 210, Waldo depo. Exh 30, 31]
[200] [Doc. No. 210, Waldo depo. at 257–58]

AMERICAN OVERSIGHT

(14) The Office of the Surgeon General also collaborated with the Democratic National Committee. Flaherty emailed Murthy on July 19, 2021, to put Murthy in touch with Jiore Craig ("Craig") from the Democratic National Committee who worked on misinformation and disinformation issues.[201] Craig and Murthy set up a Zoom meeting for July 22, 2021.

(15) After an October 28, 2021 Washington Post article stated that Facebook researchers had deep knowledge about how COVID-19 and vaccine misinformation ran through Facebook's apps, Murthy issued a series of tweets from his official Twitter account indicating he was "deeply disappointed" to read this story, that health misinformation had harmed people's health and cost lives, and that "we must demand Facebook and the rest of the social-media ecosystems take responsibility for stopping health misinformation on their platforms."[202] Murthy further tweeted that "we need transparency and accountability now."[203]

(16) On October 29, 2021, Facebook asked federal officials to provide a "federal health contract" to dictate "what content would be censored on Facebook's platforms."[204] Federal officials informed Facebook that the federal health authority that could dictate what content could be censored as misinformation was the CDC.[205]

(17) Murthy continued to publicly chastise social-media platforms for allowing health misinformation to be spread on their platforms. Murthy made statements on the following platforms: a December 21, 2021 podcast threatening to hold social-media platforms accountable for not censoring misinformation;[206] a January 3, 2022 podcast with Alyssa Milano stating that "platformers need to step up to be accountable for making their spaces safer";[207] and a February

[201] [Doc. No. 210, Exh. 22]
[202] [Doc. No. 210, Exh. 31]
[203] [Id.]
[204] [Doc. No. 210, Exh. 33]
[205] [Id.]
[206] [Doc. No. 210, Exh. 38, Audio Transcript, at 7]
[207] [Doc. No. 210–33]

AMERICAN OVERSIGHT

14, 2022 panel discussion hosted by the Rockefeller Foundation, wherein they discussed that technology platforms enabled the speed, scale, and sophistication with which this misinformation was spreading.[208]

On March 3, 2022, the Office of the Surgeon General issued a formal Request for Information ("RFI"), published in the Federal Register, seeking information from social-media platforms and others about the spread of misinformation.[209] The RFI indicated that the Office of the Surgeon General was expanding attempts to control the spread of misinformation on social media and other technology platforms.[210] The RFI also sought information about censorship policies, how they were enforced, and information about disfavored speakers.[211]The RFI was sent to Facebook, Google/YouTube, LinkedIn, Twitter, and Microsoft[212] by Max Lesko ("Lesko"), Murthy's Chief of Staff, requesting responses from these social-media platforms.[213]Murthy again restated social-media platforms' responsibility to reduce the spread of misinformation in an interview with GQ Magazine.[214] Murthy also specifically called upon Spotify to censor health information.[215]

C. CDC Defendants[216]

(1) Crawford is the Director for The Division of Digital Media within the CDC Office of the Associate Director for Communications. Her deposition was taken pursuant to preliminary-

[208] [Doc. No. 210–34]
[209] [Doc. No. 32. Ex. 42, 87 Fed. Reg. 12712]
[210] [Id.]
[211] [Id.]
[212] [Id. Exh. 46, 47, 48, 49, 50, 51]
[213] [Id.]
[214] [Id. Exh. 51]
[215] [Exh. 52]
[216] The CDC Defendants consist of the Centers for Disease Control & Prevention, Carol Crawford ("Crawford"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), United States Census Bureau ("Census Bureau"), Jennifer Shopkorn ("Shopkorn"), the Department of Health and Human Services ("HHS"), Xavier Becerra ("Becerra"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), and Joshua Peck ("Peck").

AMERICAN OVERSIGHT

injunction related discovery here.[217] The CDC is a component of the Department of Health and Human Services ("HHS"); Xavier Becerra ("Becerra") is the Secretary of HHS.[218] Crawford's division provides leadership for CDC's web presence, and Crawford, as director, determines strategy and objectives and oversees its general work.[219] Crawford was the main point of contact for communications between the CDC and social-media platforms.[220]

Prior to the COVID-19 pandemic, Crawford only had limited contact with social-media platforms, but she began having regular contact post-pandemic, beginning in February and March of 2020.[221] Crawford communicated with these platforms via email, phone, and meetings.[222]

(2) Facebook emailed State Department officials on February 6, 2020, that it had taken proactive and reactive steps to control information and misinformation related to COVID-19. The email was forwarded to Crawford, who reforwarded to her contacts on Facebook.[223] Facebook proposed to Crawford that it would create a Coronavirus page that would give information from trusted sources including the CDC. Crawford accepted Facebook's proposal on February 7, 2020, and suggested the CDC may want to address "widespread myths" on the platform.[224]

Facebook began sending Crawford CrowdTangle reports on January 25, 2021. CrowdTangle is a social-media listening tool for Meta, which shows themes of discussion on social-media channels. These reported on "top engaged COVID and vaccine-related content overall across Pages and Groups."[225] This CrowdTangle report was sent by Facebook to Crawford

[217] [Doc. No. 205-1]
[218] [Doc. No. 266-5 at 57–61]
[219] [Doc. No. 205-1 at 11]
[220] [Id. at 249]
[221] [Id. at 16–18]
[222] [Id. at 20]
[223] [Doc. 205-3 at 3]
[224] [Id. at 1–2]
[225] [Id. at 49–52]

AMERICAN OVERSIGHT

in response to a prior conversation with Crawford.[226] The CDC had privileged access to CrowdTangle since early 2020.[227]

Facebook emailed Crawford on March 3, 2020, that it intended to support the Government in its response to the Coronavirus, including a goal to remove certain information.[228] Crawford and Facebook began having discussions about misinformation with Facebook in the Fall of 2020, including discussions of how to combat misinformation.[229]

The CDC used CrowdTangle, along with Meltwater reports (used for all platforms), to monitor social media's themes of discussion across platforms.[230] Crawford recalls generally discussing misinformation with Facebook.[231] Crawford added Census Bureau officials to the distribution list for CrowdTangle reports because the Census Bureau was going to begin working with the CDC on misinformation issues.[232]

(3) On January 27, 2021, Facebook sent Crawford a recurring invite to a "Facebook weekly sync with CDC."[233] A number of Facebook and CDC officials were included in the invite, and the CDC could invite other agencies as needed.[234] The CDC had weekly meetings with Facebook.[235]

(4) On March 10, 2021, Crawford sent Facebook an email seeking information about "Themes that have been removed for misinfo."[236] The CDC questioned if Facebook had info on the types of posts that were removed. Crawford was aware that the White House and the HHS

[226] [Doc. No. 205-1, Exh. 6 at 2]
[227] [Id. at 49–52, 146–47]
[228] [Doc. No. 205-4 at 1–2]
[229] [Doc. No. 205-7 at 1–2]
[230] [Doc. No. 205-1 at 154–55]
[231] [Id. at 58]
[232] [Id.]
[233] [Doc. No. 205-1 at 226]
[234] [Doc. No. 205-36]
[235] Doc. No. 205-1 at 226]
[236] [Doc. No. 205-44 at 2–3]

AMERICAN OVERSIGHT

were also receiving similar information from Facebook.[237] The HHS was present at meetings with social-media companies on March 1, 2021,[238] and on April 21, 2021.[239]

(5) On March 25, 2021, Crawford and other CDC officials met with Facebook. In an email by Facebook prior to that meeting, Facebook stated it would present on COVID-19 misinformation and have various persons present, including a Misinformation Manager and a Content-Manager official (Liz Lagone).[240] Crawford responded, attaching a PowerPoint slide deck, stating "This is a deck Census would like to discuss and we'd also like to fit in a discussion of topic types removed from Facebook."[241] Crawford also indicated two Census Bureau officials, Schwartz and Shopkorn, would be present, as well as two Census Bureau contractors, Sam Huxley and Christopher Lewitzke.[242]

The "deck" the Census Bureau wanted to discuss contained an overview of "Misinformation Topics" and included "concerns about infertility, misinformation about side effects, and claims about vaccines leading to deaths."[243] For each topic, the deck included sample slides and a statement from the CDC debunking the allegedly erroneous claim.[244]

(6) Crawford admits she began engaging in weekly meetings with Facebook,[245] and emails verify that the CDC and Facebook were repeatedly discussing misinformation back and forth.[246] The weekly meetings involved Facebook's content-mediation teams. Crawford mainly inquired about how Facebook was censoring COVID-19 misinformation in these meetings.[247]

---

[237] [Doc. No. 205-1 at 258–61]
[238] Twitter with White House
[239] Twitter with White House
[240] [Doc. No. 205-1 at 103]
[241] [Id.]
[242] [Doc. No. 205-34 at 3]
[243] [Id. at 4]
[244] [Id. at 6–14]
[245] [Doc. No. 205-1 at 68–69]
[246] [Doc. No. 205-9 at 1–4]
[247] [Doc. No. 205-1 at 68–69]

AMERICAN OVERSIGHT

(7) The CDC entered into an Intra-Agency Agreement ("IAA") with the Census Bureau to help advise on misinformation. The IAA required that the Census Bureau provide reports to the CDC on misinformation that the Census Bureau tracked on social media.[248] To aid in this endeavor, Crawford asked Facebook to allow the Census Bureau to be added to CrowdTangle.[249]

(8) After the March 2021 weekly meetings between Facebook, the CDC, and Census Bureau began, Crawford began to press Facebook on removing and/or suppressing misinformation. In particular, she stated, "The CDC would like to have more info… about what is being done on the amplification-side," and the CDC "is still interested in more info on how you view or analyze the data on removals, etc."[250] Further, Crawford noted, "It looks like the posts from last week's deck about infertility and side effects have all been removed. Were these evaluated by the moderation team or taken down for another reason?"[251] Crawford also questioned Facebook about the CrowdTangle report showing local news coverage of deaths after receiving the vaccine and questioned what Facebook's approach is for "adding labels" to those stories.[252]

On April 13, 2021, Facebook emailed Crawford to propose enrolling CDC and Census Bureau officials in a special misinformation reporting channel; this would include five CDC officials and four Census Bureau officials. The portal was only provided to federal officials.[253]

On April 23, 2021, and again on April 28, 2021, Crawford emailed Facebook about a Wyoming Department of Health report noting that the algorithms that Facebook and other social-media networks are using to "screen out postings of sources of vaccine misinformation" were also screening out valid public health messages.[254]

---

[248] [Doc. No. 205-1 at 71–72, 110]
[249] [Doc. No. 205-9 at 1]
[250] [Doc. No. 205-9 at 2]
[251] [Id.]
[252] [Doc. No. 205-9 at 1]
[253] [Doc. No. 205-11 at 2]
[254] [Doc. No. 205-38 at 2]

AMERICAN OVERSIGHT

On May 6, 2021, Crawford emailed Facebook a table containing a list of sixteen specific postings on Facebook and Instagram that contained misinformation.[255] Crawford stated in her deposition that she knew when she "flagged" content for Facebook, they would evaluate and possibly censor the content.[256] Crawford stated CDC's goal in flagging information for Facebook was "to be sure that people have credible health information so that they can make the correct health decisions."[257] Crawford continued to "flag" and send misinformation posts to Facebook, and on May 19, 2021,[258] Crawford provided Facebook with twelve specific claims.

(9) Facebook began to rely on Crawford and the CDC to determine whether claims were true or false. Crawford began providing the CDC with "scientific information" for Facebook to use to determine whether to "remove or reduce and inform."[259] Facebook was relying on the CDC's "scientific information" to determine whether statements made on its platform were true or false.[260] The CDC would respond to "debunk" claims if it had an answer.[261] These included issues like whether COVID-19 had a 99.96% survival rate, whether COVID-19 vaccines cause bells' palsy, and whether people who are receiving COVID-19 vaccines are subject to medical experiments.[262]

Facebook content-mediation officials would contact Crawford to determine whether statements made on Facebook were true or false.[263] Because Facebook's content-moderation policy called for Facebook to remove claims that are false and can lead to harm, Facebook would

[255] [Doc. No. 205-10 at 1–3]
[256] [Doc. No. 205-1 at 88]
[257] [Id.]
[258] [Doc. No. 205-12 at 1]
[259] [Id. at 2]
[260] [Doc. No. 205-1 at 106]
[261] [Id.]
[262] [Doc. No. 205-12 at 1–2]
[263] [Doc. No. 205-12 at 2]

AMERICAN OVERSIGHT

remove and/or censor claims the CDC itself said were false.[264] Questions by Facebook to the CDC related to this content-moderation included whether spike proteins in COVID-19 vaccines are dangerous and whether Guillain-Barre Syndrome or heart inflammation is a possible side effect of the COVID-19 vaccine.[265] Crawford normally referred Facebook to CDC subject-matter experts or responded with the CDC's view on these scientific questions.[266]

(10) Facebook continued to send the CDC biweekly CrowdTangle content insight reports, which included trending topics such as Door-to-Door Vaccines, Vaccine Side Effects, Vaccine Refusal, Vaccination Lawsuits, Proof of Vaccination Requirement, COVID-19 and Unvaccinated Individuals, COVID-19 Mandates, Vaccinating Children, and Allowing People to Return to Religious Services.[267]

(11) On August 19, 2021, Facebook asked Crawford for a Vaccine Adverse Event Reporting System ("VAERS") meeting for the CDC to give Facebook guidance on how to address VAERS-related "misinformation."[268] The CDC was concerned about VAERS-related misinformation because users were citing VAERS data and reports to raise concerns about the safety of vaccines in ways the CDC found to be "misleading."[269] Crawford and the CDC followed up by providing written materials for Facebook to use.[270] The CDC eventually had a meeting with Facebook about VAERS-related misinformation and provided two experts for this issue.[271]

(12) On November 2, 2021, a Facebook content-moderation official reached out to the CDC to obtain clarity on whether the COVID-19 vaccine was harmful to children. This was

[264] [Doc. No. 205-26 at 1–4]
[265] [Doc. No. 205-18]
[266] [Doc. No. 205-1 at 140]
[267] [Doc. No. 205-20 at 205–20]
[268] [Doc. No. 205-21]
[269] [Doc. No. 205-22]
[270] [Doc. No. 205-21]
[271] [Doc. No. 205-1 at 151–52]

AMERICAN OVERSIGHT

following the FDA's emergency use authorization ("EUA") related to the COVID-19 vaccine.[272] In addition to the EUA issue for children, Facebook identified other claims it sought clarity on regarding childhood vaccines and vaccine refusals.[273]

The following Monday, November 8, 2021, Crawford followed up with a response from the CDC, which addressed seven of the ten claims Facebook had asked the CDC to evaluate. The CDC rated six of the claims "False" and stated that any of these false claims could cause vaccine refusal.[274]

The questions the CDC rated as "false" were:

1) COVID-19 vaccines weaken the immune system;
2) COVID-19 vaccines cause auto-immune diseases;
3) Antibody-dependent enhancement ("ADE") is a side effect of COVID-19 vaccines;
4) COVID-19 vaccines cause acquired immunodeficiency syndrome (AIDS);
5) Breast milk from a vaccinated parent is harmful to babies/children; and
6) COVID-19 vaccines cause multi-system inflammatory syndrome in children (MIS-C).

(13) On February 3, 2022, Facebook again asked the CDC for clarification on whether a list of claims were "false" and whether the claims, if believed, could contribute to vaccine refusals.[275] The list included whether COVID-19 vaccines cause ulcers or neurodegenerative diseases such as Huntington's and Parkinson's disease; the FDA's possible future issuance of an EUA to children six months to four years of age; and questions about whether the COVID-19 vaccine causes death, heart attacks, autism, birth defects, and many others.[276]

(14) In addition to its communications with Facebook, the CDC and Census Bureau also had involvement with Google/YouTube. On March 18, 2021, Crawford emailed Google, with the

[272] [Doc. 205-23 at 1–2]
[273] [Id.]
[274] [Doc. No. 205–24]
[275] [Doc. No. 205-26 at 1]
[276] [Id. at 1–4]

AMERICAN OVERSIGHT

subject line "COVID Misinfo Project." Crawford informed Google that the CDC was now working with the Census Bureau (who had been meeting with Google regularly) and wanted to set up a time to talk and discuss the "COVID Misinfo Project."[277] According to Crawford, the previous Census project referred to the Census' work on combatting 2020 Census misinformation.[278]

On March 23, 2021, Crawford sent a calendar invite for a March 24, 2021 meeting, which included Crawford and five other CDC employees, four Census Bureau employees, and six Google/YouTube officials.[279] At the March 24, 2021 meeting, Crawford presented a slide deck similar to the one prepared for the Facebook meeting. The slide deck was entitled "COVID Vaccine Misinformation: Issue Overview" and included issues like infertility, side effects, and deaths. The CDC and the Census Bureau denied that COVID-19 vaccines resulted in infertility, caused serious side effects, or resulted in deaths. [280]

(15) On March 29, 2021, Crawford followed up with Google about using their "regular 4 p.m. meetings" to go over things with the Census.[281] Crawford recalled that the Census was asking for regular meetings with platforms, specifically focused on misinformation.[282] Crawford also noted that the reference to the "4 p.m. meeting" refers to regular biweekly meetings with Google, which "continues to the present day."[283] Crawford also testified she had similar regular meetings with Meta and Twitter, and previously had regular meetings with Pinterest. Crawford stated these meetings were mostly about things other than misinformation, but misinformation was discussed at the meetings.[284]

---

[277] [Doc. No. 205-28]
[278] [Doc. No. 205-1 at 175]
[279] [Doc. No. 214-22 Jones Dec. Exh. T] SEALED DOCUMENT
[280] [Id.] SEALED DOCUMENT
[281] [Doc. No. 205-1 at 179–82]
[282] [Doc. No. 205-1 at 184–85]
[283] [Doc. No. 205-1 at 180]
[284] [Id. at 181]

AMERICAN OVERSIGHT

(16) On May 10, 2021, Crawford emailed Facebook to establish "COVID BOLO" ("Be on The Lookout") meetings. Google and YouTube were included.[285] Crawford ran the BOLO meetings, and the Census Bureau official arranged the meetings and prepared the slide deck for each meeting.[286]

The first BOLO meeting was held on May 14, 2021; the slide deck for the meeting was entitled "COVID Vaccine Misinformation: Hot Topics" and included five "hot topics" with a BOLO note for each topic. The five topics were: the vaccines caused "shedding"; a report made on VAERS that a two-year old child died from the vaccine; other alleged misleading information on VAERS reports; statements that vaccines were bioweapons, part of a depopulation scheme, or contain microchips; and misinformation about the eligibility of twelve to fifteen year old children for the vaccine.[287] All were labeled as "false" by the CDC, and the potential impact on the public was a reduction of vaccine acceptance.

The second BOLO meeting was held on May 28, 2021. The second meeting also contained a slide deck with a list of three "hot topics" to BOLO: that the Moderna vaccine was unsafe; that vaccine ingredients can cause people to become magnetic; and that the vaccines cause infertility or fertility-related issues in men. All were labeled as false by the CDC, and possibly impacted reduced vaccine acceptance.[288]

A third BOLO meeting scheduled for June 18, 2021, was cancelled due to the new Juneteenth holiday. However, Crawford sent the slide deck for the meeting. The hot topics for this meeting were: that vaccine particles accumulate in ovaries causing fertility; that vaccines contain

[285] [Doc. No. 205-40]
[286] [Doc. No. 205-1 at 246, 265–66]
[287] [Doc. No. 214-23 at 4–5] SEALED DOCUMENT
[288] [Doc. No. 214-24 at 3–7] SEALED DOCUMENT

AMERICAN OVERSIGHT

microchips; and because of the risk of blood clots to vaccinated persons, airlines were discussing a ban. All were labeled as false.[289]

The goal of the BOLO meetings was to be sure credible information was out there and to flag information the CDC thought was not credible for potential removal.[290]

On September 2, 2021, Crawford emailed Facebook and informed them of a BOLO for a small but growing area of misinformation: one of the CDC's lab alerts was misinterpreted and shared via social media.[291]

(17) The CDC Defendants also had meetings and/or communications with Twitter. On April 8, 2021, Crawford sent an email stating she was "looking forward to setting up regular chats" and asked for examples of misinformation. Twitter responded.[292]

On April 14, 2021, Crawford sent an email to Twitter giving examples of misinformation topics, including that vaccines were not FDA approved, fraudulent cures, VAERS data taken out of context, and infertility. The list was put together by the Census Bureau team.[293]

On May 10, 2021, Crawford emailed Twitter to print out two areas of misinformation, which included copies of twelve tweets.[294] Crawford informed Twitter about the May 14, 2021 BOLO meeting and invited Twitter to participate. The examples of misinformation given at the meeting included: vaccine shedding; that vaccines would reduce the population; abnormal bleeding; miscarriages for women; and that the Government was lying about vaccines. In a

[289] [Doc. No. 214-25 at 2–7] SEALED DOCUMENT
[290] [Doc. No. 205-1 at 266]
[291] [Doc. No. 205-22]
[292] [Doc. No. 205-1 at 197, 205–33]
[293] [Doc. No. 205-33]
[294] [Doc. No. 205-34]

AMERICAN OVERSIGHT

response, Twitter stated that at least some of the examples had been "reviewed and actioned."[295] Crawford understood that she was flagging posts for Twitter for possible censorship.[296]

Twitter additionally offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship.[297] Crawford asked for instructions of how to enroll in the Partnership Support Portal and provided her personal Twitter account to enroll. Crawford was fully enrolled on May 27, 2021.[298] Census Bureau contractor Christopher Lewitzke ("Lewitzke") also requested to enroll in the Partner Support Portal.[299]

Crawford also sent Twitter a BOLO for the alleged misinterpretation of a CDC lab report.[300]

(18) Crawford testified in her deposition that the CDC has a strong interest in tracking what its constituents are saying on social media.[301] Crawford also expressed concern that if content were censored and removed from social-media platforms, government communicators would not know what the citizen's "true concerns" were.[302]

D. NIAID Defendants[303]

The NIAID is a federal agency under HHS. Dr. Fauci was previously the Director of NIAID. Dr. Fauci's deposition was taken as a part of the limited preliminary injunction discovery in this matter.[304]

---

[295] [Id.]
[296] [Doc. No. 205-1 at 211]
[297] [Id. at 211–12]
[298] [Id. at 211–18]
[299] [Doc. No. 201-34 at 2]
[300] [Doc. No. 201-35]
[301] [Doc. No. 201-1 at 57–58]
[302] [Id. at 75]
[303] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").
[304] [Doc. No. 206]

AMERICAN OVERSIGHT

1) Dr. Fauci had been the director of the NIAID for over thirty-eight years and became Chief Medical Advisor to the President in early 2021.[305] Dr. Fauci retired December 31, 2022.

1. Lab-Leak Theory

Plaintiffs set forth arguments that because NIAID had funded "gain-of-function"[306] research at Dr. Fauci's direction at the Wuhan Institute of Virology ("Wuhan lab") in Wuhan, China, Dr. Fauci sought to suppress theories that the SARS-CoV2 virus leaked from the Wuhan lab.[307]

(1) Plaintiffs allege that Dr. Fauci's motive for suppressing the lab-leak theory was a fear that Dr. Fauci and NIAID could be blamed for funding gain-of-function research that created the COVID-19 pandemic. Plaintiffs allege Dr. Fauci participated in a secret call with other scientists on February 1, 2020, and convinced the scientists (who were proponents of the lab-leak theory) to change their minds and advocate for the theory that the COVID-19 virus originated naturally.[308] A few days after the February 1, 2020 call, a paper entitled "The Proximal Origin of COVID-19" was published by Nature Medicine on March 17, 2020. The article concludes that SARS-CoV2 was not created in a lab but rather was naturally occurring.

On February 2, 2020, Dr. Fauci told the other scientists that "given the concerns of so many people and the threat of further distortions on social media it is essential that we move quickly. Hopefully, we can get the WHO to convene."[309] Dr. Fauci emailed Dr. Tedros of the WHO and two senior WHO officials, urging WHO to quickly establish a working group to address the lab-leak theory. Dr. Fauci stated they should "appreciate the urgency and importance of this issue

[305] [Doc. No. 206-1 at 10 (Deposition of Dr. Anthony S. Fauci)]
[306] "Gain-of-function" research involves creating a potentially dangerous virus in a laboratory.
[307] [Doc. No. 212-3 at 151–85]
[308] [Id. at 165]
[309] [Doc. No. 206-9 at 2]

AMERICAN OVERSIGHT

given the gathering internet evident in the science literature and in mainstream and social media to the question of the origin of this virus." Dr. Fauci also stated WHO needed to "get ahead of …the narrative of this and not reacting to reports which could be very damaging."[310] Numerous drafts of "The Proximal Origin of COVID-19" were sent to Dr. Fauci to review prior to the article being published in Nature Medicine.[311]

(2) On February 9, 2020, in a joint podcast with Dr. Peter Daszak of the Eco Health Alliance,[312] both Drs. Fauci and Daszak discredited the lab-leak theory, calling it a "conspiracy theory."[313]

(3) Three authors of "The Proximal Origins of SARS-CoV2," Robert Garry, Kristian Anderson, and Ian Lipkin, received grants from NIH in recent years.[314]

(4) After "The Proximal Origins of SARS-CoV2" was completed and published in Nature Medicine, Dr. Fauci began discrediting the lab-leak theory. "This study leaves little room to refute a natural original for COVID-19." "It's a shining object (lab-leak theory) that will go away in times."[315]

At an April 17, 2020 press conference, when asked about the possibility of a lab-leak, Dr. Fauci stated, "There was a study recently that we can make available to you, where a group of highly qualified evolutionary virologists looked at the sequences there and the sequences in bats as they evolve. And the mutations that it took to get to the point where it is now is totally consistent

[310] [Doc. No. 206-9 at 1]
[311] [Doc. No. 206-13 at 1, 7-8; 206-11 at 2–3; and 206–20]
[312] [Doc. No. 206-16 at 1]
[313] [Doc. No. 206-16 at 1; 206-17 at 1]
[314] [Doc. No. 214-30]
[315] [Doc. No. 206-27 at 3–4]

AMERICAN OVERSIGHT

with jump of a species from animal to a human."[316] "The Proximal Origin of SARS-CoV2" has since become one of the most widely read papers in the history of science.[317]

(5) Twitter and Facebook censored the lab-leak theory of COVID-19.[318] However, Dr. Fauci claims he is not aware of any suppression of speech about the lab-leak theory on social media, and he claims he does not have a Twitter or Facebook account.[319]

(6) On March 15, 2020, Zuckerberg sent Dr. Fauci an email asking for coordination between Dr. Fauci and Facebook on COVID-19 messaging. Zuckerberg asked Dr. Fauci to create a video to be used on Facebook's Coronavirus Information Hub, with Dr. Fauci answering COVID-19 health questions, and for Dr. Fauci to recommend a "point person" for the United States Government "to get its message out over the platform."[320]

Dr. Fauci responded the next day to Zuckerberg saying, "Mark your idea and proposal sounds terrific," "would be happy to do a video for your hub," and "your idea about PSAs is very exciting." Dr. Fauci did three live stream Facebook Q&A's about COVID-19 with Zuckerberg.[321]

2. Hydroxychloroquine

Plaintiffs further allege the NIAID and Dept. of HHS Defendants suppressed speech on hydroxychloroquine. On May 22, 2020, The Lancet published an online article entitled "Hydroxychloroquine or chloroquine with or without a macrolide for treatment of COVID-19: a multi-national registry analysis."[322] The article purported to analyze 96,032 patients to compare persons who did and did not receive this treatment. The study concluded that hydroxychloroquine

[316] (Video of April 17, 2020, White House Coronavirus Task Force Briefing, at https://www.youtube.com/watch?v=brbArPX8=6I)
[317] [Doc. No. 214-30]
[318] [Doc. No. 206-32 at 1–2; Doc. No. 206-33 at 3]
[319] [Doc. No. 206-1 at 210]
[320] [Doc. No. 206-24 at 3]
[321] [Doc. No. 201-1 at 177]
[322] [Doc. No. 206-36 at 1]

AMERICAN OVERSIGHT

and chloroquine were associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for treatment of COVID-19.[323]

Dr. Fauci publicly cited this study to claim that "hydroxychloroquine is not effective against coronavirus."[324] He then publicly began to discredit COVID-19 treatment with hydroxychloroquine and stated whether the treatment of COVID-19 by hydroxychloroquine was effective could only be judged by rigorous, randomized, double-blind, placebo-based studies. He testified the same on July 31, 2020, before the House Select Subcommittee on Coronavirus Crisis.[325]

(2) When America's Frontline Doctors held a press conference criticizing the Government's response to the COVID-19 pandemic and spouting the benefits of hydroxychloroquine in treating the coronavirus,[326] Dr. Fauci made statements on Good Morning America[327] and on Andrea Mitchell Reports[328] that hydroxychloroquine is not effective in treating the coronavirus. Social-media platforms censored the America's Frontline Doctors videos. Facebook, Twitter, and YouTube removed the video.[329] Dr. Fauci does not deny that he or his staff at NIAID may have communicated with social-media platforms, but he does not specifically recall it.[330]

3. The Great Barrington Declaration

(1) The GBD was published online on October 4, 2020. The GBD was published by Plaintiffs Dr. Bhattacharja of Stanford and Dr. Kulldorff of Harvard, along with Dr. Gupta of

[323] [Id.]
[324] [Doc. No. 206-35 at 1]
[325] https://www.youtube.com/watch?v=RUNCSOQD2UE
[326] [Doc. No. 207-2 at 5]
[327] [Doc. No. 207-1 at 2]
[328] [Doc. No. 207-1 at 2–3]
[329] [Doc. No. 207-2 at 6]
[330] [Doc. No. 206-1 at 238]

AMERICAN OVERSIGHT

Oxford. The GBD is a one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection."[331] It criticized the social distancing and lockdown approaches endorsed by government experts. The authors expressed grave concerns about physical and mental health impacts of current government COVID-19 lockdown policies and called for an end to lockdowns.[332]

(2) On October 8, 2020, Dr. Francis Collins emailed Dr. Fauci (and Cliff Lane) stating:

> Hi Tony and Cliff, See https://gbdeclaration.org/. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention – and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating published take down of its premises. I don't see anything like that online yet- is it underway? Francis.[333]

The same day, Dr. Fauci wrote back to Dr. Collins stating, "Francis: I am pasting in below a piece from Wired that debunks this theory. Best, Tony."[334]

Dr. Fauci and Dr. Collins followed up with a series of public media statements attacking the GBD. In a Washington Post story run on October 14, 2020, Dr. Collins described the GBD and its authors as "fringe" and "dangerous."[335] Dr. Fauci consulted with Dr. Collins before he talked to the Washington Post.[336] Dr. Fauci also endorsed these comments in an email to Dr. Collins, stating "what you said was entirely correct."[337]

On October 15, 2020, Dr. Fauci called the GBD "nonsense" and "dangerous."[338] Dr. Fauci specifically stated, "Quite frankly that is nonsense, and anybody who knows anything about

---

[331] [Doc. No. 207-5 at 3]
[332] [Id.]
[333] [Doc. No. 207-6]
[334] [Doc. No. 207-7]
[335] [Doc. No. 207-9]
[336] [Doc. No. 206-1 at 272]
[337] [Doc. No. 207-10]
[338] [Doc. No. 207-11 at 1]

AMERICAN OVERSIGHT

epidemiology will tell you that is nonsense and very dangerous."[339] Dr. Fauci testified "it's possible that" he coordinated with Dr. Collins on his public statements attacking the GBD.[340]

(3) Social-media platforms began censoring the GBD shortly thereafter. In October 2020, Google de-boosted the search results for the GBD so that when Google users googled "Great Barrington Declaration," they would be diverted to articles critical of the GBD, and not to the GBD itself.[341] Reddit removed links to the GBD.[342] YouTube updated its terms of service regarding medical "misinformation," to prohibit content about vaccines that contradicted consensus from health authorities.[343] Because the GBD went against a consensus from health authorities, its content was removed from YouTube. Facebook adopted the same policies on misinformation based upon public health authority recommendations.[344] Dr. Fauci testified that he could not recall anything about his involvement in seeking to squelch the GBD.[345]

(4) NIAID and NIH staff sent several messages to social-media platforms asking them to remove content lampooning or criticizing Dr. Fauci. When a Twitter employee reached out to CDC officials asking if a particular account associated with Dr. Fauci was "real or not,"[346] Scott Prince of NIH responded, "Fake/Imposter handle. PLEASE REMOVE!!!"[347] An HHS official then asked Twitter if it could "block" similar parody accounts: "Is there anything else you can also do to block other variations of his (Dr. Fauci's) name from impersonation so we don't have this

[339] [Id. at 3]
[340] [Doc. No. 206-1 at 279]
[341] [Doc. No. 207-12 at 4]
[342] [Id. at 4–5]
[343] [Doc. No. 207-13 at 4–5]
[344] [Doc. No. 207-15]
[345] [Doc. No. 206-1 at 251–52, 255–58]
[346] [Doc. No. 207-17 at 2]
[347] [Id.]

AMERICAN OVERSIGHT

occur again?"[348] Twitter replied, "We'll freeze this @handle and some other variations so no one can hop on them."[349]

On April 21, 2020, Judith Lavelle of NIAID emailed Facebook, copying Scott Prince of NIH and Jennifer Routh ("Routh"), and stated, "We wanted to flag a few more fake Dr. Fauci accounts on FB and IG for you I have reported them from NIAID and my personal FB account."[350] Both Lavelle and Routh are members of Dr. Fauci's communications staff.[351] Six of the eight accounts listed were removed by Facebook on the same day.[352]

(5) On October 30, 2020, a NIAID staffer wrote an email connecting Google/YouTube with Routh, "so that NIAID and the 'Google team' could connect on vaccine communications-specifically misinformation.'"[353] Courtney Billet ("Billet"), director of the Office of Communications and Government Relations of NIAID, was added by Routh, along with two other NIAID officials, to a communications chain with YouTube.[354] Twitter disclosed that Dina Perry ("Perry"), a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship.[355]

(6) Dr. Fauci testified that he has never contacted a social-media company and asked them to remove misinformation from one of their platforms.[356]

4. Ivermectin

(8) On September 13, 2021, Facebook emailed Carol Crawford of the CDC to ask whether the claim that "Ivermectin is effective in treating COVID is false, and if believed, could

[348] [Id. at 1]
[349] [Id.]
[350] [Doc. No. 207-19 at 3]
[351] [Doc. No. 206-1 at 308]
[352] [Doc. No. 207-19 at 3]
[353] [Doc. No. 207-20 at 1]
[354] [Id.]
[355] [Doc. No. 214-8 at 1]
[356] [Doc. No. 206-1 at 151]

AMERICAN OVERSIGHT

contribute to people refusing the vaccine or self-medicating."[357] The CDC responded the next day and advised Facebook that the claim that Ivermectin is effective in treating COVID is "NOT ACCURATE."[358] The CDC cited the NIH's treatment guidelines for authority that the claims were not accurate.[359]

5. Mask Mandates

(9) Plaintiffs maintain that Dr. Fauci initially did not believe masks worked, but he changed his stance. A February 4, 2020 email, in which Dr. Fauci responded to an email from Sylvia Burwell, stated, "the typical mask you buy in a drugstore is not really effective in keeping out the virus, which is small enough to pass through mankind."[360] Dr. Fauci stated that, at that time, there were "no studies" on the efficacy of masking to stop the spread.[361] On March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective.[362]

Plaintiffs allege that Dr. Fauci's position on masking changed dramatically on April 3, 2020, when he became an advocate for universal mask mandates.[363] Dr. Fauci testified his position changed in part because "evidence began accumulating that masks actually work in preventing acquisition and transmission,"[364] although Dr. Fauci could not identify those studies.[365]

---

[357] [Doc. No. 207-22 at 2]
[358] [Id. at 1]
[359] [Id.]
[360] [Doc. No. 206-1 at 314]
[361] [Id. at 316]
[362] [Id. at 318]
[363] [Id. at 317]
[364] [Id.]
[365] [Id. at 318]

AMERICAN OVERSIGHT

6. Alex Berenson

Alex Berenson ("Berenson") was a former New York Times Science reporter and critic of government messaging about COVID-19 vaccines. He was de-platformed from Twitter on August 28, 2021.[366]

Dr. Fauci had previously sought to discredit Berenson publicly during an interview with CNN.[367] Dr. Fauci does not deny that he may have discussed Berenson with White House or federal officials, but does not recall specifically whether he did so.[368]

E. FBI Defendants[369]

(1) The deposition of Elvis Chan ("Chan") was taken on November 29, 2021.[370] Chan is the Assistant Special Agent in charge of the Cyber Branch for the San Francisco Division of the FBI.[371] In this role, Chan was one of the primary people communicating with social-media platforms about disinformation on behalf of the FBI. There are also other agents on different cyber squads, along with the FBI's private sector engagement squad, who relay information to social-media platforms.[372]

Chan graduated from the Naval Postgraduate School in 2020 with a M.A. in Homeland Security Studies.[373] His thesis was entitled, "Fighting Bears and Trolls. An Analysis of Social Media Companies and U.S. Government Efforts to Combat Russian Influence Campaigns During the 2020 U.S. Elections."[374] His thesis focuses on information sharing between the FBI, Facebook,

---

[366] [Doc. No. 207-23 at 4]
[367] [Doc. No. 207-24 at 1–2]
[368] [Doc. No. 206-1 at 341–43]
[369] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").
[370] [Doc. No. 204-1]
[371] [Id. at 8]
[372] [Id. at 105]
[373] [Id. at 10]
[374] [Doc. No. 204-2 at 1]

AMERICAN OVERSIGHT

Google, and Twitter.[375] Chan relied on research performed by persons and entities comprising the Election Integrity Partnership, including Graphika,[376] and DiResta of the Stanford Internet Observatory. Chan communicated directly with DiResta about Russian disinformation.[377]

Chan also knows Alex Stamos ("Stamos"), the head of the Stanford Internet Observatory, from when Stamos worked for Facebook.[378] Chan and Stamos worked together on "malign-foreign-influence activities, on Facebook."[379]

(2) Chan stated that the FBI engages in "information sharing" with social-media companies about content posted on their platforms, which includes both "strategic-level information" and "tactical information."[380]

(3) The FBI, along with Facebook, Twitter, Google/YouTube, Microsoft, Yahoo!, Wikimedia Foundation, and Reddit, participate in a Cybersecurity and Infrastructure Security Agency ("CISA") "industry working group."[381] Representatives of CISA, the Department of Homeland Security's Intelligence & Analysis Division ("I&A"), the Office of Director of National Intelligence ("ODNI"), the FBI's FITF, the Dept. of Justice National Security Division, and Chan participate in these industry working groups.[382]

Chan participates in the meetings because most social-media platforms are headquartered in San Francisco, and the FBI field offices are responsible for maintaining day-to-day relationships with the companies headquartered in its area of responsibility.[383]

---

[375] [Id. at 18]
[376] [Doc. No. 204-1 at 145]
[377] [Doc. No. 204-1 at 51–52, 85]
[378] [Id. at 54]
[379] [Id at 55]
[380] [Id. at 16–19]
[381] [Id. at 18, 23–24]
[382] [Id. at 24, 171]
[383] [Id. at 24]

AMERICAN OVERSIGHT

Matt Masterson ("Masterson") was the primary facilitator in the meetings for the 2022 election cycle, and Brian Scully ("Scully") was the primary facilitator ahead of the 2022 election.[384] At the USG-Industry ("the Industry") meetings, social-media companies shared disinformation content, providing a strategic overview of the type of disinformation they were seeing. The FBI would then provide strategic, unclassified overviews of things they were seeing from Russian actors.[385]

The Industry meetings were "continuing" at the time Chan's deposition was taken on November 23, 2022, and Chan assumes the meetings will continue through the 2024 election cycle.[386]

(4) Chan also hosted bilateral meetings between FBI and Facebook, Twitter, Google/YouTube, Yahoo!/Verizon, Microsoft/LinkedIn, Wikimedia Foundation and Reddit,[387] and the Foreign Influence Task Force.[388] In the Industry meetings, the FBI raised concerns about the possibility of "hack and dump" operations during the 2020 election cycle.[389] The bilateral meetings are continuing, occurring quarterly, but will increase to monthly and weekly nearer the elections.[390]

In the Industry meetings, FBI officials meet with senior social-media platforms in the "trust and safety or site integrity role." These are the persons in charge of enforcing terms of service and content-moderation policies.[391] These meetings began as early as 2017.[392] At the Industry

[384] [Id. at 25–26]
[385] [Id. at 156–57]
[386] [Id. at 285–86]
[387] [Id. at 23–24]
[388] [Id. at 39]
[389] [Id.]
[390] [Id. at 40]
[391] [Id. at 43–44]
[392] [Id. at 87–89]

AMERICAN OVERSIGHT

meetings, in addition to Chan and Laura Dehmlow ("Dehmlow"), head of the FITF, between three and ten FITF officials and as high as a dozen FBI agents are present.[393]

(5) On September 4, 2019, Facebook, Google, Microsoft, and Twitter along with the FITF, ODNI, and CISA held a meeting to discuss election issues. Chan attended, along with Director Krebs, Masterson, and Scully. Social media's trust and safety on content-moderation teams were also present. The focus of the meeting was to discuss with the social-media companies the spread of "disinformation."[394]

(6) Discovery obtained from LinkedIn contained 121 pages of emails between Chan, other FBI officials, and LinkedIn officials.[395] Chan testified he has a similar set of communications with other social-media platforms.[396]

(7) The FBI communicated with social-media platforms using two alternative, encrypted channels, Signal and Teleporter.[397]

(8) For each election cycle, during the days immediately preceding and through election days, the FBI maintains a command center around the clock to receive and forward reports of "disinformation" and "misinformation." The FBI requests that social-media platforms have people available to receive and process the reports at all times.[398]

(9) Before the Hunter Biden Laptop story breaking prior to the 2020 election on October 14, 2020, the FBI and other federal officials repeatedly warned industry participants to be alert for "hack and dump" or "hack and leak" operations.[399]

---

[393] [Id. at 109–10]
[394] [Id. at 151]
[395] [Doc. No. 204-3]
[396] Doc. No. 204-1 at 288]
[397] [Id. at 295–296]
[398] [Id. at 301]
[399] [Doc. No. 204-1 at 172, 232–34]

AMERICAN OVERSIGHT

Dehmlow also mentioned the possibility of "hack and dump" operations.[400] Additionally, the prospect of "hack and dump" operations was repeatedly raised at the FBI-led meetings with FITF and the social-media companies, in addition to the Industry meetings.[401]

Social-media platforms updated their policies in 2020 to provide that posting "hacked materials" would violate their policies. According to Chan, the impetus for these changes was the repeated concern about a 2016-style "hack-and-leak" operation.[402] Although Chan denies that the FBI urged the social-media platforms to change their policies on hacked material, Chan did admit that the FBI repeatedly asked the social-media companies whether they had changed their policies with regard to hacked materials[403] because the FBI wanted to know what the companies would do if they received such materials.[404]

(10) Yoel Roth ("Roth"), the then-Head of Site Integrity at Twitter, provided a formal declaration on December 17, 2020, to the Federal Election Commission containing a contemporaneous account of the "hack-leak-operations" at the meetings between the FBI, other natural-security agencies, and social-media platforms.[405] Roth's declaration stated:

> Since 2018, I have had regular meetings with the Office of the Director of National Intelligence, the Department of Homeland Security, the FBI, and industry peers regarding election security. During these weekly meetings, the federal law enforcement agencies communicated that they expected "hack-and-leak" operations by state actors might occur during the period shortly before the 2020 presidential election, likely in October. I was told in these meetings that the intelligence community expected that individuals associated with political campaigns would be subject to hacking attacks and that material obtained through those hacking attacks would likely be disseminated over social-media platforms, including Twitter. These expectations of hack-and-leak operations

[400] [Id. at 175]
[401] [Id. at 177–78]
[402] [Id. at 205]
[403] [Id. at 206]
[404] [Id. at 249]
[405] [Doc. No. 204-5, ¶¶ 10-11, at 2–3]

AMERICAN OVERSIGHT

> were discussed through 2020. *I also learned in these meetings that there were rumors that a hack-and-leak operation would involve Hunter Biden.*[406]

Chan testified that, in his recollection, Hunter Biden was not referred to in any of the CISA Industry meetings.[407] The mention of "hack-and-leak" operations involving Hunter Biden is significant because the FBI previously received Hunter Biden's laptop on December 9, 2019, and knew that the later-released story about Hunter Biden's laptop was not Russian disinformation.[408]

In Scully's deposition,[409] he did not dispute Roth's version of events.[410]

Zuckerberg testified before Congress on October 28, 2020, stating that the FBI conveyed a strong risk or expectation of a foreign "hack-and-leak" operation shortly before the 2020 election and that the social-media companies should be on high alert. The FBI also indicated that if a trove of documents appeared, they should be viewed with suspicion.[411]

(11) After the Hunter Biden laptop story broke on October 14, 2020, Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019.[412]

The Hunter Biden laptop story was censored on social media, including Facebook and Twitter.[413] Twitter blocked users from sharing links to the New York Post story and prevented users who had previously sent tweets sharing the story from sending new tweets until they deleted

---

[406] (emphasis added)
[407] [Doc. No. 204-1 at 213, 227–28].
[408] [Doc. No. 106-3 at 5–11]
[409] [Doc. No. 209]
[410] [Id. at 247]
[411] [Doc. 204-6 at 56]
[412] [Doc. No. 204-1 at 215]
[413] [Doc. No. Doc 204-5 at ¶ 17]

AMERICAN OVERSIGHT

the previous tweet.[414] Further, Facebook began reducing the story's distribution on the platform pending a third-party fact-check.[415]

(12) Chan further testified that during the 2020 election cycle, the United States Government and social-media companies effectively limited foreign influence companies through information sharing and account takedowns.[416] Chan's thesis also recommended standardized information sharing and the establishment of a national coordination center.

According to Chan, the FBI shares this information with social-media platforms as it relates to information the FBI believes should be censored.[417] Chan testified that the purpose and predictable effect of the tactical information sharing was that social-media platforms would take action against the content in accordance with their policies.[418] Additionally, Chan admits that during the 2020 election cycle, the United States Government engaged in information sharing with social-media companies.[419] The FBI also shared "indicators" with state and local government officials.[420]

Chan's thesis includes examples of alleged Russian disinformation, which had a number of reactions and comments from Facebook users, including an anti-Hillary Clinton post, a secure-border post, a Black Lives Matter post, and a pro-Second Amendment post.[421]

Chan also identified Russian-aligned websites on which articles were written by freelance journalists. A website called NADB, alleged to be Russian-generated, was also identified by the FBI, and suppressed by social-media platforms, despite such content being drafted and written by

[414] [Id.]
[415] [Doc. No. 204-6 at 2]
[416] [Doc. No. 204-2 at 3]
[417] [Id.]
[418] [Id. at 32–33]
[419] [Id. at 19]
[420] [Id. at 50]
[421] [Id.]

AMERICAN OVERSIGHT

American users on that site.[422] The FBI identified this site to the social-media companies that took action to suppress it.[423]

(13) "Domestic disinformation" was also flagged by the FBI for social-media platforms. Just before the 2020 election, information would be passed from other field offices to the FBI 2020 election command post in San Francisco. The information sent would then be relayed to the social-media platforms where the accounts were detected.[424] The FBI made no attempt to distinguish whether those reports of election disinformation were American or foreign.[425]

Chan testified the FBI had about a 50% success rate in having alleged election disinformation taken down or censored by social-media platforms.[426] Chan further testified that although the FBI did not tell the social-media companies to modify their terms of service, the FBI would "probe" the platforms to ask for details about the algorithms they were using[427] and what their terms of service were.[428]

(14) Chan further testified the FBI identifies specific social-media accounts and URLs to be evaluated "one to five times a month"[429] and at quarterly meetings.[430] The FBI would notify the social-media platforms by sending an email with a secure transfer application within the FBI called a "Teleporter." The Teleporter email contains a link for them to securely download the files from the FBI.[431] The emails would contain "different types of indicators," including specific

[422] [Id. at 144–46]
[423] [Doc. No. 204-1 at 141-43]
[424] [Id. at 162]
[425] [Id. at 163]
[426] [Id. at 167]
[427] [Id. at 88]
[428] [Id. at 92]
[429] [Id. at 96]
[430] [Id. at 98]
[431] [Id.]

AMERICAN OVERSIGHT

social-media accounts, websites, URLs, email accounts, and the like, that the FBI wanted the platforms to evaluate under their content-moderation policies.[432]

Most of the time, the emails flagging the misinformation would go to seven social-media platforms. During 2020, Chan estimated he sent out these emails from one to six times per month and in 2022, one to four times per month. Each email would flag a number that ranged from one to dozens of indicators.[433] When the FBI sent these emails, it would request that the social-media platforms report back on the specific actions taken as to these indicators and would also follow up at the quarterly meetings.[434]

(15) At least eight FBI agents at the San Francisco office, including Chan, are involved in reporting disinformation to social-media platforms.[435] In addition to FBI agents, a significant number of FBI officials from the FBI's Foreign Influence Task Force also participate in regular meetings with social-media platforms about disinformation.[436]

Chan testified that the FBI uses its criminal-investigation authority, national-security authority, the Foreign Intelligence Surveillance Act, the PATRIOT Act, and Executive Order 12333 to gather national security intelligence to investigate content on social media.[437]

Chan believes with a high degree of confidence that the FBI's identification of "tactical information" was accurate and did not misidentify accounts operated by American citizens.[438] However, Plaintiffs identified tweets and trends on Twitter, such as #ReleasetheMemo in 2019, and indicated that 929,000 tweets were political speech by American citizens.[439]

---

[432] [Id. at 99]
[433] [Id. at 100–01]
[434] [Id. at 102–03]
[435] [Id. at 105–08]
[436] [Id. at 108]
[437] [Id. at 111–12]
[438] [Id. at 112]
[439] [Doc. No. 204-2 at 71]

AMERICAN OVERSIGHT

(16) Chan testified that he believed social-media platforms were far more aggressive in taking down disfavored accounts and content in the 2018 and 2020 election cycles.[440] Chan further thinks that pressure from Congress, specifically the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, resulted in more aggressive censorship policies.[441] Chan also stated that congressional hearings placed pressure on the social-media platforms.[442]

Chan further testified that Congressional staffers have had meetings with Facebook, Google/YouTube, and Twitter and have discussed potential legislation.[443] Chan spoke directly with Roth of Twitter, Steven Slagle of Facebook, and Richard Salgado of Google, all of whom participated in such meetings.[444]

(17) Chan testified that 3,613 Twitter accounts and 825 Facebook accounts were taken down in 2018. Chan testified Twitter took down 422 accounts involving 929,000 tweets in 2019.[445]

(18) Chan testified that the FBI is continuing its efforts to report disinformation to social-media companies to evaluate for suppression and/or censorship.[446] "Post-2020, we've never stopped…as soon as November 3 happened in 2020, we just pretty much rolled into preparing for 2022."[447]

[440] [Id. at 115–16]
[441] [Id. at 116]
[442] [Id. at 117–18]
[443] [Id. at 118]
[444] [Id. at 123–26]
[445] [Id. at 133–34, 149–50]
[446] [Doc. No. 204-8 at 2–3]
[447] [Doc. No. 204-8 at 2]

AMERICAN OVERSIGHT

E. CISA Defendants[448]

The deposition of Brian Scully was taken on January 12, 2023, as part of the injunction-related discovery in this matter.

(1) The CISA regularly meets with social-media platforms in several types of standing meetings. Scully is the chief of CISA's Mis, Dis and Malinformation Team ("MDM Team"). Prior to President Biden taking office, the MDM Team was known as the "Countering Foreign Influence Task Force ("CFITF").[449] Protentis is the "Engagements Lead" for the MDM Team, and she is in charge of outreach and engagement to key stakeholders, interagency partners, and private sector partners, which includes social-media platforms. Scully performed Protentis's duties while she was on maternity leave.[450] Both Scully and Protentis have done extended detail at the National Security Council, where they work on misinformation and disinformation issues.[451]

(2) Scully testified that during 2020, the MDM Team did "switchboard work" on behalf of election officials. "Switchboarding" is a disinformation-reporting system provided by CISA that allows state and local election officials to identify something on social media they deem to be disinformation aimed at their jurisdiction. The officials would then forward the information to CISA, which would in turn share the information with the social-media companies.[452]

The main idea, according to Scully, is that the information would be forwarded to social-media platforms, which would make decisions on the content based on their policies.[453] Scully further testified he decided in late April or early May 2022 not to perform switchboarding in 2022.

---

[448] CISA Defendants consist of the Cybersecurity and Infrastructure Security Agency ("CISA"), Jen Easterly ("Easterly"), Kim Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), the Department of Homeland Security ("DHS"), Alejandro Mayorkas ("Mayorkas"), Robert Silvers ("Silvers"), and Samantha Vinograd ("Vinograd").
[449] [Doc. No. 209-1 at 12]
[450] [Id. at 18–20]
[451] [Id. at 19]
[452] [Id. at 16–17]
[453] [Id. at 17]

AMERICAN OVERSIGHT

However, the CISA website states the MDM Team serves as a "switchboard for routing disinformation concerns to social-media platforms."[454] The switchboarding activities began in 2018.[455]

(3) The MDM Team continues to communicate regularly with social-media platforms in two different ways. The first way is called "Industry" meetings. The Industry meetings are regular sync meetings between government and industry, including social-media platforms.[456] The second type of communication involves the MDM Team reviewing regular reports from social-media platforms about changes to their censorship policies or to their enforcement actions on censorship.[457]

(4) The Industry meetings began in 2018 and continue to this day. These meetings increase in frequency as each election nears. In 2022, the Industry meetings were monthly but increased to biweekly in October 2022.[458]

Government participants in the USG-Industry meetings are CISA, the Department of Justice ("DOJ"), ODNI, and the Department of Homeland Security ("DHS"). CISA is typically represented by Scully and Hale. Scully's role is to oversee and facilitate the meetings.[459] Wyman, Snell, and Protentis also participate in the meetings on behalf of CISA.[460] On behalf of the FBI, FITF Chief Dehmlow, Chan, and others from different parts of the FBI participate.[461]

In addition to the Industry meetings, CISA hosts at least two "planning meetings:" one between CISA and Facebook and an interagency meeting between CISA and other participating

[454] [Doc. No. 209-19 at 3]
[455] [Id.]
[456] [Doc. No. 209-1 at 21]
[457] [Id.]
[458] [Id. at 24]
[459] [Id. at 25]
[460] [Id. at 28]
[461] [Id. at 29]

AMERICAN OVERSIGHT

federal agencies.[462] The social-media platforms attending the industry meetings include Facebook, Twitter, Microsoft, Google/YouTube, Reddit, LinkedIn, and sometimes the Wikipedia Foundation.[463] At the Industry meetings, participants discuss concerns about misinformation and disinformation. The federal officials report their concerns over the spread of disinformation. The social-media platforms in turn report to federal officials about disinformation trends, share high-level trend information, and repot the actions they are taking.[464] Scully testified that the specific discussion of foreign-originating information is ultimately targeted at preventing domestic actors from engaging in this information.[465]

(5) CISA has established relationships with researchers at Stanford University, the University of Washington, and Graphika.[466] All three are involved in the Election Integrity Partnership ("EIP").[467]

When the EIP was starting up, CISA interns came up with the idea of having some communications with the EIP. CISA began having communications with the EIP, and CISA connected the EIP with the Center for Internet Security ("CIS"). The CIS is a CISA-funded, non-profit that channels reports of disinformation from state and local government officials to social-media platforms. The CISA interns who originated the idea of working with the EIP also worked for the Stanford Internet Observatory, another part of the EIP. CISA had meetings with Stanford Internet Observatory officials, and eventually both sides decided to work together.[468] The "gap"

[462] [Id. at 36–37]
[463] [Id. at 39]
[464] [Id. at 39–41]
[465] [Id. at 41]
[466] [Id. at 46, 48]
[467] [Id. at 48]
[468] [Id. at 49–52]

AMERICAN OVERSIGHT

that the EIP was designed to fill concerned state and local officials' lack of resources to monitor and report on disinformation that affects their jurisdictions.[469]

(6) The EIP continued to operate during the 2022 election cycle. At the beginning of the election cycle, the EIP gave Scully and Hale, on behalf of CISA, a briefing in May or June of 2022.[470] In the briefing, DiResta walked through what the plans were for 2022 and some lessons learned from 2020. The EIP was going to support state and local election officials in 2022.

(7) The CIS is a non-profit that oversees the Multi-State Information Sharing and Analysis Center ("MS-ISAC") and the Election Infrastructure Information Sharing and Analysis Center ("EI-ISAC"). Both MS-ISAC and EI-ISAC are organizations of state and/or local government officials created for the purpose of information sharing.[471]

CISA funds the CIS through a series of grants. CISA also directs state and local officials to the CIS as an alternative route to "switchboarding."[472] CISA connected the CIS with the EIP because the EIP was working on the same mission,[473] and it wanted to make sure they were all connected. Therefore, CISA originated and set up collaborations between local government officials and CIS and between the EIP and CIS.

(8) CIS worked closely with CISA in reporting misinformation to social-media platforms. CIS would receive the reports directly from election officials and would forward this information to CISA. CISA would then forward the information to the applicable social-media platforms. CIS later began to report the misinformation directly to social-media platforms.[474]

---

[469] [Id. at 57]
[470] [Id. at 53–54]
[471] [Id. at 59–61]
[472] [Id. at 61–62]
[473] [Id. at 62–63]
[474] [Id. at 63–64]

AMERICAN OVERSIGHT

The EIP also reported misinformation to social-media platforms. CISA served as a mediating role between CIS and EIP to coordinate their efforts in reporting misinformation to the platforms. There were also direct email communications between the EIP and CISA about reporting misinformation.[475] When CISA reported misinformation to social-media platforms, CISA would generally copy the CIS, who, as stated above, was coordinating with the EIP.[476]

(9) Stamos and DiResta of the Stanford Internet Observatory briefed Scully about the EIP report, "The Long Fuse,"[477] in late Spring or early Summer of 2021. Scully also reviewed copies of that report. Stamos and DiResta also have roles in CISA: DiResta serves as "Subject Matter Expert" for CISA's Cybersecurity Advisory Committee, MDM Subcommittee, and Stamos serves on the CISA Cybersecurity Advisory Committee, as does Kate Starbird ("Starbird") of the University of Washington.[478] Stamos identified the EIP's "partners in government" as CISA, DHS, and state and local officials.[479] Also, according to Stamos, the EIP targeted "large following political partisans who were spreading misinformation intentionally."[480]

(10) CISA's Masterson was also involved in communicating with the EIP.[481] Masterson and Scully questioned EIP about their statements on election-related information. Sanderson left CISA in January 2021, was a fellow at the Stanford Internet Observatory, and began working for Microsoft in early 2022.[482]

---

[475] [Id. at 63–66]
[476] [Id. at 67–68]
[477] [Doc. 209-2]
[478] [Doc. No. 209-1, at 72, 361; Doc. No. 212-36 at 4 (Jones Deposition-SEALED DOCUMENT)]
[479] [Doc. No. 209-4 at 4]
[480] [Scully depo. Exh. at 17]
[481] [Doc. No. 209-1 at 76]
[482] [Id. at 88–89]

AMERICAN OVERSIGHT

(11) CISA received misinformation principally from two sources: the CIS directly from state and local election officials; and information sent directly to a CISA employee.[483] CISA shared information with the EIP and the CIS.[484]

(12) CISA did not do an analysis to determine what percentage of misinformation was "foreign derived." Therefore, CISA forwards reports of information to social-media platforms without determining whether they originated from foreign or domestic sources.[485]

(13) The Virality Project was created by the Stanford Internet Observatory to mimic the EIP for COVID.[486] As previously stated, Stamos and DiResta of the Stanford Internet Observatory were involved in the Virality Project. Stamos gave Scully an overview of what they planned to do with the Virality Project, similar to what they did with the EIP.[487] Scully also had conversations with DiResta about the Virality Project.[488] DiResta noted the Virality Project was established on the heels of the EIP, following its success in order to support government health officials' efforts to combat misinformation targeting COVID-19 vaccines.[489]

(14) According to DiResta, the EIP was designed to "get around unclear legal authorities, including very real First Amendment questions" that would arise if CISA or other government agencies were to monitor and flag information for censorship on social media.[490]

(15) The CIS coordinated with the EIP regarding online misinformation and reported it to CISA. The EIP was using a "ticketing system" to track misinformation.[491] Scully asked the social-media platforms to report back on how they were handling reports of misinformation and

[483] [Id. at 119–20]
[484] [Id. at 120–21]
[485] [Id. at 122–23]
[486] [Id. at 134]
[487] [Id. at 134–36]
[488] [Id. at 139]
[489] [Doc. No. 209-5 at 7]
[490] [Id. at 4]
[491] [Doc. No. 209-1 at 159]

AMERICAN OVERSIGHT

disinformation received from CISA.[492] CISA maintained a "tracking spreadsheet" of its misinformation reports to social-media platforms during the 2020 election cycle.[493]

(16) At least six members of the MDM team, including Scully, "took shifts" in the "switchboarding" operation reporting disinformation to social-media platforms; the others were Chad Josiah ("Josiah"), Rob Schaul ("Schaul"), Alex Zaheer ("Zaheer"), John Stafford ("Stafford"), and Pierce Lowary ("Lowary"). Lowary and Zaheer were simultaneously serving as interns for CISA and working for the Stanford Internet Observatory, which was the operating the EIP.[494] Therefore, Zaheer and Lowary were simultaneously engaged in reporting misinformation to social-media platforms on behalf of both CISA and the EIP.[495] Zaheer and Lowary were also two of the four Stanford interns who came up with the idea for the EIP.[496]

(17) The CISA switchboarding operation ramped up as the election drew near. Those working on the switchboarding operation worked tirelessly on election night.[497] They would also "monitor their phones" for disinformation reports even during off hours so that they could forward disinformation to the social-media platforms.[498]

(18) As an example, Zaheer, when switchboarding for CISA, forwarded supposed misinformation to CISA's reporting system because the user had claimed "mail-in voting is insecure" and that "conspiracy theories about election fraud are hard to discount."[499]

CISA's tracking spreadsheet contains at least eleven entries of switchboarding reports of misinformation that CISA received "directly from EIP" and forwarded to social-media platforms

[492] [Doc. No. 209-6 at 11]
[493] [Doc. No. 209-1 at 165–66]
[494] [Id. at 166–68, 183]
[495] [Id.]
[496] [Id. at 171, 184–85]
[497] [Id. at 174–75]
[498] [Id. at 75]
[499] [Doc. No. 209-6 at 61–62]

AMERICAN OVERSIGHT

to review under their policies.[500] One of these reports was reported to Twitter for censorship because EIP "saw an article on the Gateway Pundit" run by Plaintiff Jim Hoft.[501]

(19) Scully admitted that CISA engaged in "informal fact checking" to determine whether a claim was true or not.[502] CISA would do its own research and relay statements from public officials to help debunk postings for social-media platforms. In debunking information, CISA apparently always assumed the government official was a reliable source; CISA would not do further research to determine whether the private citizen posting the information was correct or not.[503]

(20) CISA's switchboarding activities reported private and public postings.[504] Social-media platforms responded swiftly to CISA's reports of misinformation.[505]

(21) CISA, in its interrogatory responses, disclosed five sets of recurring meetings with social-media platforms that involved discussions of misinformation, disinformation, and/or censorship of speech on social media.[506] CISA also had bilateral meetings between CISA and the social-media companies.[507]

(22) Scully does not recall whether "hack and leak" or "hack and dump" operations were raised at the Industry meetings, but does not deny it either.[508] However, several emails confirm that "hack and leak" operations were on the agenda for the Industry meeting on September 15, 2020,[509] and July 15, 2020.[510]

---

[500] [Doc. No. 214-35 at 5–6, Column C]
[501] [Id. at 4–5, Column F, Line 94]
[502] CISA also became the "ministry of truth."
[503] [Doc. No. 209-1 at 220–22]
[504] [Doc. No. 209-7 at 45–46]
[505] [Doc. No. 209-1 at 291–94; 209–49]
[506] [Doc. No. 209-9 at 38–40]
[507] [Doc. No. 209-1 at 241]
[508] [Id. at 236–37]
[509] [Doc. No. 209-13 at 1]
[510] [Doc. No. 209-14 at 16]

AMERICAN OVERSIGHT

(23) In the spring and summer of 2022, CISA's Protentis requested that social-media platforms prepare a "one-page" document that sets forth their content-moderation rules[511] that could then be shared with election officials—and which also included "steps for flagging or escalating MDM content" and how to report misinformation.[512] Protentis referred to the working group (which included Facebook and CISA's Hale) as "Team CISA."[513]

(24) The Center for Internet Security continued to report misinformation to social-media platforms during the 2022 election cycle.[514]

(25) CISA has teamed up directly with the State Department's Global Engagement Center ("GEC") to seek review of social-media content.[515] CISA also flagged for review parody and joke accounts.[516] Social-media platforms report to CISA when they update their content-moderation policies to make them more restrictive.[517] CISA publicly stated that it is expanding its efforts to fight disinformation-hacking in the 2024 election cycle.[518]

(26) A draft copy of the DHS's "Quadrennial Homeland Security Review," which outlines the department's strategy and priorities in upcoming years, states that the department plans to target "inaccurate information" on a wide range of topics, including the origins of the COV ID-19 pandemic, the efficacy of COVID-19 vaccines, racial justice, the United States' withdrawal from Afghanistan, and the nature of the United States' support of Ukraine.[519]

[511] [Doc. No. 209-14]
[512] [Doc. No. 209-15 at 41, 44–45]
[513] [Doc. No. 209-15 at 39]
[514] [Doc. No. 209-1 at 266]
[515] [Doc. No. 209-15 at 1–2]
[516] [Id. at 11–12]
[517] [Id. at 9]
[518] [Doc. No. 209-20 at 1–2]
[519] [Doc. No. 209-23 at 1–4]

AMERICAN OVERSIGHT

(27) Scully also testified that CISA engages with the CDC and DHS to help them in their efforts to stop the spread of disinformation. The examples given were about the origins of the COVID-19 pandemic and Russia's invasion of Ukraine.[520]

(28) On November 21, 2021, CISA Director Easterly reported that CISA is "beefing up its misinformation and disinformation team in wake of a diverse presidential election a proliferation of misleading information online."[521] Easterly stated she was going to "grow and strengthen" CISA's misinformation and disinformation team. She further stated, "We live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if people get to pick their own facts."[522]

Easterly also views the word "infrastructure" very expansively, stating, "[W]e're in the business of protecting critical infrastructure, and the most critical is our 'cognitive infrastructure.'"[523] Scully agrees with the assessment that CISA has an expansive mandate to address all kinds of misinformation that may affect control and that could indirectly cause national security concerns.[524]

On June 22, 2022, CISA's cybersecurity Advisory Committee issued a Draft Report to the Director, which broadened "infrastructure" to include "the spread of false and misleading information because it poses a significant risk to critical function, like elections, public health, financial services and emergency responses."[525]

[520] [Doc. No. 209-1 at 323–25]
[521] [Doc. No. 209-1 at 335–36]
[522] [Doc. No. 209-18 at 1–2]
[523] [Id.]
[524] [Doc. No. 209-1 at 341]
[525] [Doc. No. 209-25 at 1]

AMERICAN OVERSIGHT

(29) In September 2022, the CIS was working on a "portal" for government officials to report election-related misinformation to social-media platforms.[526] That work continues today.[527]

F. State Department Defendants[528]

1. The GEC

(1) Daniel Kimmage is the Principal Deputy Coordinator of the State Department's Global Engagement Center ("GEC").[529] The GEC's front office and senior leadership meets with social-media platforms every few months, sometimes quarterly.[530] The meetings focus on the "tools and techniques" of stopping the spread of disinformation on social media, but they rarely discuss specific content that is posted.[531] Additionally, GEC has a "Technology Engagement Team" ("TET") that also meets with social-media companies. The TET meets more frequently than the GEC.[532]

(2) Kimmage recalls two meetings with Twitter. At these meetings, the GEC would bring between five and ten people including Kimmage, one or more deputy coordinators, and team chiefs from the GEC and working-level staff with relevant subject-matter expertise.[533] The GEC staff would meet with Twitter's content-mediation teams, and the GEC would provide an overview of what it was seeing in terms of foreign propaganda and information. Twitter would then discuss similar topics.[534]

---

[526] [Doc. No. 210-22]
[527] [Id.]
[528] The State Department Defendants consist of the United States Department of State, Leah Bray ("Bray"), Daniel Kimmage ("Kimmage'), and Alex Frisbie ("Frisbie").
[529] Kimmage's deposition was taken and filed as [Doc. No. 208-1].
[530] [Doc. No. 208-1 at 29, 32]
[531] [Id. at 30]
[532] [Id. at 37]
[533] [Id. at 130–31]
[534] [Id. at 133–36]

AMERICAN OVERSIGHT

(3) The GEC's senior leadership also had similar meetings with Facebook and Google. Similar numbers of people were brought to these meetings by GEC, and similar topics were discussed. Facebook and Google also brought their content-moderator teams.[535]

(4) Samaruddin Stewart ("Stewart") was the GEC's Senior Advisor who was a permanent liaison in Silicon Valley for the purpose of meeting with social-media platforms about disinformation. Stewart set up a series of meetings with LinkedIn to discuss "countering disinformation" and to explore shared interests and alignment of mutual goals regarding the challenge.[536]

(5) The GEC also coordinated with CISA and the EIP. Kimmage testified that the GEC had a "general engagement" with the EIP.[537]

(6) On October 17, 2022, at an event at Stanford University, Secretary of State Anthony Blinken mentioned the GEC and stated that the State Department was "engaging in collaboration and building partnerships" with institutions like Stanford to combat the spread of propaganda.[538] Specifically, he stated, "We have something called the Global Engagement Center that's working on this every single day."[539]

(7) Like CISA, the GEC works through the CISA-funded EI-ISAC and works closely with the Stanford Internet Observatory and the Virality Project.

---

[535] [Id. at 141–43]
[536] [Id. at 159–60]
[537] [Id. at 214–215]. The details surrounding the EIP are described in II 6(5)(6)(7)(8)(9)(10)(15) and (16). Scully Ex. 1 details EIPS work carried out during the 2020 election.
[538] [Doc. No. 208-17 at 5]
[539] [Id.]

AMERICAN OVERSIGHT

2. The EIP

(8) The EIP is partially-funded by the United States National Science Foundation through grants.[540] Like its work with CISA, the EIP, according to DiResta, was designed to "get around unclear legal authorities, including very real First Amendment questions" that would arise if CISA or other government agencies were to monitor and flag information for censorship on social media.[541]

The EIP's focus was on understanding misinformation and disinformation in the social-media landscape, and it successfully pushed social-media platforms to adopt more restrictive policies about election-related speech in 2020.[542]

The government agencies that work with and submit alleged disinformation to the EIP are CISA, the State Department Global Engagement Center, and the Elections Infrastructure Information Sharing and Analysis Center.[543]

(9) The EIP report further states that the EIP used a tiered model based on "tickets" collected internally and from stakeholders. The tickets also related to domestic speech by American citizens,[544] including accounts belonging to media outlets, social-media influencers, and political figures.[545] The EIP further emphasized that it wanted greater access to social-media platform's internal data and recommended that the platforms increase their enforcement of censorship policies.[546]

---

[540] [Id. at 17]
[541] [Doc. No. 209-5 at 4]
[542] [Doc. No. 209-5, Exh. 1; Ex. 4 at 7, Audio Tr. 4]
[543] [Doc. No. 209-2 at 30]
[544] [Id. at 11]
[545] [Id. at 12]
[546] [Id. at 14]

AMERICAN OVERSIGHT

The EIP was formed on July 26, 2020, 100 days before the November 2020 election.[547] On July 9, 2020, the Stanford Internet Observatory presented the EIP concept to CISA. The EIP team was led by Research Manager DiResta, Director Stamos and the University of Washington's Starbird.[548]

(10) EIP's managers both report misinformation to platforms and communicate with government partners about their misinformation reports.[549] EIP team members were divided into tiers of on-call shifts. Each shift was four hours long and led by one on-call manager. The shifts ranged from five to twenty people. Normal scheduled shifts ran from 8:00 a.m. to 8:00 p.m., ramping up to sixteen to twenty hours a day during the week of the election.[550]

(11) Social-media platforms that participated in the EIP were Facebook, Instagram, Google/YouTube, Twitter, TikTok, Reddit, Nextdoor, Discord, and Pinterest.[551]

(12) In the 2020 election cycle, the EIP processed 639 "tickets," 72% of which were related to delegitimizing the election results.[552] Overall, social-media platforms took action on 35% of the URLs reported to them.[553] One "ticket" could include an entire idea or narrative and was not always just one post.[554] Less than 1% of the tickets related to "foreign interference."[555]

(13) The EIP found that the Gateway Pundit was one of the top misinformation websites, allegedly involving the "exaggeration" of the input of an issue in the election process. The EIP did

[547] [Id. at 20]
[548] [Id.]
[549] [Id. at 27–28]
[550] [Id. at 28]
[551] [Id. at 35]
[552] [Id. at 45]
[553] [Id. at 58]
[554] [Id. at 27]
[555] [Id. at 53]

AMERICAN OVERSIGHT

not say that the information was false.[556] The EIP Report cites The Gateway Pundit forty-seven times.[557]

(14) The GEC was engaging with the EIP and submitted "tickets."[558]

(15) The tickets and URLs encompassed millions of social-media posts, with almost twenty-two million posts on Twitter alone.[559] The EIP sometimes treats as "misinformation" truthful reports that the EIP believes "lack broader context."[560]

(16) The EIP stated "influential accounts on the political right…were responsible for the most widely spread of false or misleading information in our data set."[561] Further, the EIP stated the twenty-one most prominent report spreaders on Twitter include political figures and organizations, partisan media outlets, and social-media stars. Specifically, the EIP stated, "All 21 of the repeat spreaders were associated with conservative or right-wing political views and support of President Trump."[562] The Gateway Pundit was listed as the second-ranked "Repeat Spreader of Election Misinformation" on Twitter. During the 2020 election cycle, the EIP flagged The Gateway Pundit in twenty-five incidents with over 200,000 retweets.[563] The Gateway Pundit ranked above Donald Trump, Eric Trump, Breitbart News, and Sean Hannity.[564]

The Gateway Pundit's website was listed as the domain cited in the most "incidents"; its website content was tweeted by others in 29,209 original tweets and 840,740 retweets.[565] The Gateway Pundit ranked above Fox News, the New York Post, the New York Times, and the

[556] [Id. at 51]
[557] [Id. at 51, 74, 76, 101, 103, 110, 112, 145, 150–51, 153, 155–56, 172, 175, 183, 194–95, 206–09, 211–12, 214–16, and 226]
[558] [Id. at 60]
[559] [Id. at 201]
[560] [Id. at 202]
[561] [Id. at 204–05]
[562] [Id. at 204–05]
[563] [Id.]
[564] [Id. at 246]
[565] [Id. at 207]

AMERICAN OVERSIGHT

Washington Post.[566] The EIP report also notes that Twitter suspended The Gateway Pundit's account on February 6, 2021, and it was later de-platformed entirely.[567]

(17) The EIP notes that "during the 2020 election, all of the major platforms made significant changes to election integrity policies—policies that attempted to slow the spread of specific narratives and tactics that could 'potentially mislead or deceive the public.'"[568] The EIP was not targeting foreign disinformation, but rather "domestic speakers."[569] The EIP also indicated it would continue its work in future elections.[570]

(18) The EIP also called for expansive censorship of social-media speech into other areas such as "public health."[571]

(19) The EIP stated that it "united government, academic, civil society, and industry, analyzing across platforms to address misinformation in real time."[572]

(20) When asked whether the targeted information was domestic, Stamos answered, "It is all domestic, and the second point on the domestic, a huge part of the problem is well-known influences… you… have a relatively small number of people with very large followings who have the ability to go and find a narrative somewhere, pick it out of obscurity and … harden it into these narratives."[573]

Stamos further stated:

> We have set up this thing called the Election Integrity Partnership, so we went and hired a bunch of students. We're working with the University of Washington, Graphika, and DFR Lab and the vast, vast majority we see we believe is domestic. And so, I think a much bigger issue for the platforms is elite disinformation. The staff that

[566] [Id.]
[567] [Id. at 224]
[568] [Id. at 229]
[569] [Id. at 243–44]
[570] [Id. at 243–44]
[571] [Id. at 251]
[572] [Id. at 259]
[573] [Doc. No. 276-1 at 12]

AMERICAN OVERSIGHT

> is being driven by people who are verified that are Americans who are using their real identities.[574]

(21) Starbird of the University of Washington, who is on a CISA subcommittee and an EIP participant, also verified the EIP was targeting domestic speakers, stating:

> Now fast forward to 2020, we saw a very different story around disinformation in the U.S. election. It was largely domestic coming from inside the United States… Most of the accounts perpetrating this…. they're authentic accounts. They were often blue check and verified accounts. They were pundits on cable television shows that were who they said they were … a lot of major spreaders were blue check accounts, and it wasn't entirely coordinated, but instead, it was largely sort of cultivated and even organic in places with everyday people creating and spreading disinformation about the election.[575]

3. The Virality Project

(22) The Virality Project targeted domestic speakers' alleged disinformation relating to the COVID-19 vaccines.[576] The Virality Project's final report, dated April 26, 2022, lists DiResta as principal Executive Director and lists Starbird and Masterson as contributors.[577]

According to the Virality Project, "vaccine mis-and disinformation was largely driven by a cast of recuring [sic] actors including long-standing anti-vaccine influencers and activists, wellness and lifestyle influence, pseudo medical influencers, conspiracy theory influencers, right-leaning political influencers, and medical freedom influencers."[578]

The Virality Project admits the speech it targets is primarily domestic, stating "Foreign … actor's reach appeared to be far less than that of domestic actors."[579] The Virality Project also calls for more aggressive censorship of COVID-19 misinformation, calls for more federal agencies to

---

[574] [Id.]
[575] [Doc. No. 276-1 at 42]
[576] [Doc. No. 209-3]; Memes, Magnets, Microchips, Narrative Dynamics Around COVID-19 Vaccines.
[577] [Doc. No. 209-3 at 4]
[578] [Id. at 9]
[579] [Id.]

AMERICAN OVERSIGHT

be involved through "cross-agency collaboration,"[580] and calls for a "whole-of-society response."[581] Just like the EIP, the Virality Project states that it is "multistakeholder collaboration" that includes "government entities" among its key stakeholders.[582] The Virality Project targets tactics that are not necessarily false, including hard-to-verify content, alleged authorization sources, organized outrage, and sensationalized/misleading headlines.[583]

(23) Plaintiff Hines of the Health Freedom Louisiana was flagged by the Virality Project to be a "medical freedom influencer" who engages in the "tactic" of "organized outrage" because she created events or in-person gatherings to oppose mask and vaccine mandates in Louisiana.[584]

(24) The Virality Project also acknowledges that government "stakeholders," such as "federal health agencies" and "state and local public health officials," were among those that "provided tips" and "requests to access specific incidents and narratives."[585]

(25) The Virality Project also targeted the alleged COVID-19 misinformation for censorship before it could go viral. "Tickets also enabled analysts to qualify tag platform or health sector partners to ensure their situational awareness of high-engagement material that appeared to be going viral, so that those partners could determine whether something might merit a rapid public or on-platform response."[586]

(26) The Virality Project flagged the following persons and/or organizations as spreaders of misinformation:

i. Jill Hines and Health Freedom of Louisiana;[587]
ii. One America News;[588]

[580] [Id. at 12]
[581] [Id.]
[582] [Id. at 17]
[583] [Id. at 19]
[584] [Id. at 9, 19]
[585] [Id. at 24]
[586] [Id. at 37]
[587] [Id. at 59]
[588] [Id. at 60]

AMERICAN OVERSIGHT

iii. Breitbart News;[589]
iv. Alex Berenson;[590]
v. Tucker Carlson;[591]
vi. Fox News;[592]
vii. Candace Owens;[593]
viii. The Daily Wire;[594]
ix. Robert F. Kennedy, Jr.;[595]
x. Dr. Simone Gold and America's Frontline Doctors; and[596]
xi. Dr. Joyce Mercula.[597]

(27) The Virality Project recommends that the federal government implement a Misinformation and Disinformation Center of Excellence, housed within the federal government, which would centralize expertise on mis/disinformation within the federal government at CISA.[598]

III. LAW AND ANALYSIS

A. Preliminary Injunction Standard

An injunction is an extraordinary remedy never awarded of right. *Benisek v. Lamone*, 138 U.S. 1942, 1943 (2018). In each case, the courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U. S. 7, 24, 129 S. Ct. 365 (2008).

The standard for an injunction requires a movant to show: (1) the substantial likelihood of success on the merits; (2) that he is likely to suffer irreparable harm in the absence of an injunction; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Benisek*, 138 U.S. at 1944. The party seeking relief must satisfy a cumulative burden of proving

[589] [Id.]
[590] [Id. at 54, 57, 49, 50]
[591] [Id. at 57]
[592] [Id. at 91]
[593] [Id. at 86, 92]
[594] [Id.]
[595] [Id.]
[596] [Id. at 87–88]
[597] [Id. at 87]
[598] [Id. at 150]

AMERICAN OVERSIGHT

each of the four elements enumerated before an injunction can be granted. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). None of the four prerequisites has a quantitative value. *State of Tex. v. Seatrain Int'l, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975).

B. Analysis

As noted above, Plaintiffs move for a preliminary injunction against Defendants' alleged violations of the Free Speech Clause of the First Amendment. Plaintiffs assert that they are likely to succeed on the merits of their First Amendment claims because Defendants have significantly encouraged and/or coerced social-media companies into removing protected speech from social-media platforms. Plaintiffs also argue that failure to grant a preliminary injunction will result in irreparable harm because the alleged First Amendment violations are continuing and/or there is a substantial risk that future harm is likely to occur. Further, Plaintiffs maintain that the equitable factors and public interest weigh in favor of protecting their First Amendment rights to freedom of speech. Finally, Plaintiffs move for class certification under Federal Rule of Civil Procedure 23.

In response, Defendants maintain that Plaintiffs are unlikely to succeed on the merits for a myriad of reasons. Defendants also maintain that Plaintiffs lack Article III standing to bring the claims levied herein, that Plaintiffs have failed to show irreparable harm because the risk of future injury is low, and that the equitable factors and public interests weigh in favor of allowing Defendants to continue enjoying permissible government speech.

Each argument will be addressed in turn below.

1. Plaintiffs' Likelihood of Success on the Merits

For the reasons explained herein, the Plaintiffs are likely to succeed on the merits of their First Amendment claim against the White House Defendants, Surgeon General Defendants, CDC Defendants, FBI Defendants, NIAID Defendants, CISA Defendants, and State Department

AMERICAN OVERSIGHT

Defendants. In ruling on a motion for Preliminary Injunction, it is not necessary that the applicant demonstrate an absolute right to relief. It need only establish a probable right. *West Virginia Highlands Conservancy v. Island Creek Coal Co.*, 441 F.2d 232 (4th Cir. 1971). The Court finds that Plaintiffs here have done so.

a. Plaintiffs' First Amendment Claims

The Free Speech Clause prohibits only governmental abridgment of speech. It does not prohibit private abridgment of speech. *Manhattan Community Access Corporation v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals. *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. *Id.* Government action, aimed at the suppression of particular views on a subject that discriminates on the basis of viewpoint, is presumptively unconstitutional. The First Amendment guards against government action "targeted at specific subject matter," a form of speech suppression known as "content-based discrimination." *National Rifle Association of America v. Cuomo*, 350 F. Supp. 3d 94, 112 (N.D. N.Y. 2018). The private party, social-media platforms are not defendants in the instant suit, so the issue here is not whether the social-media platforms are government actors,[599] but whether the government can be held responsible for the private platforms' decisions.

Viewpoint discrimination is an especially egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the perspective of the speaker is the rationale for the restriction. *Rosenberger v. Rectors and Visitors*

[599] This is a standard that requires the private action to be "fairly attributable to the state." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982).

AMERICAN OVERSIGHT

of University of Virginia, 515 U.S. 819, 829 (1995). Strict scrutiny is applied to viewpoint discrimination. *Simon & Schuster, Inc. v. Members of the New York State Crime Victim's Board*, 505 U.S. 105 (1991). The government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. *Police Department of Chicago v. Moseley*, 408 U.S. 92, 96 (1972).

If there is a bedrock principal underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377 (1996). The benefit of any doubt must go to protecting rather than stifling speech. *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 891 (2010).

i. Significant Encouragement and Coercion

To determine whether Plaintiffs are substantially likely to succeed on the merits of their First Amendment free speech claim, Plaintiffs must prove that the Federal Defendants either exercised coercive power or exercised such significant encouragement that the private parties' choice must be deemed to be that of the government. Additionally, Plaintiffs must prove the speech suppressed was "protected speech." The Court, after examining the facts, has determined that some of the Defendants either exercised coercive power or provided significant encouragement, which resulted in the possible suppression of Plaintiffs' speech.

The State (i.e., the Government) can be held responsible for a private decision only when it has exercised coercive power or has provided such "significant encouragement," either overt or covert, that the choice must be deemed to be that of the State. Mere approval or acquiescence in the actions of a private party is not sufficient to hold the state responsible for those actions. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Rendell-Baker v. Kohn*, 457 U.S. 830, 1004–05 (1982);

AMERICAN OVERSIGHT

National Broadcasting Co. Inc v. Communications Workers of America, Afl-Cio, 860 F.2d 1022 (11th Cir. 1988); *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1213 (11th Cir. 2003); *Brown v. Millard County*, 47 Fed. Appx. 882 (10th Cir. 2002).

In evaluating "significant encouragement," a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish. *Norwood v. Harrison*, 413 U.S. at 465. Additionally, when the government has so involved itself in the private party's conduct, it cannot claim the conduct occurred as a result of private choice, even if the private party would have acted independently. *Peterson v. City of Greenville*, 373 U.S. at 247–48. Further, oral, or written statements made by public officials could give rise to a valid First Amendment claim where the comments of a governmental official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request. *National Rifle Association of America*, 350 F. Supp. 3d at 114. Additionally, a public official's threat to stifle protected speech is actionable under the First Amendment and can be enjoined, even if the threat turns out to be empty. *Backpage.com, LLC v. Dart*, 807 F. 3d at 230–31.

The Defendants argue that the "significant encouragement" test for government action has been interpreted to require a higher standard since the Supreme Court's ruling in *Blum v. Yaretsky*, 457 U.S. 991 (1982). Defendants also argue that Plaintiffs are unable to meet the test to show Defendants "significantly encouraged" social-media platforms to suppress free speech. Defendants further maintain Plaintiffs have failed to show "coercion" by Defendants to force social-media companies suppress protected free speech. Defendants also argue they made no threats but rather sought to "persuade" the social-media companies. Finally, Defendants maintain the private social-media companies made independent decisions to suppress certain postings.

AMERICAN OVERSIGHT

In *Blum*, the Supreme Court held the Government "can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice in law must be deemed to be that of the state." *Blum*, 457 U.S. at 1004. Defendants argue that the bar for "significant encouragement" to convert private conduct into state action is high. Defendants maintain that *Blum*'s language does not mean that the Government is responsible for private conduct whenever the Government does more than adopt a passive position toward it. *Skinner v. Ry. Labor Execs. Ass'n.*, 489 U.S. 602, 615 (1989).

Defendants point out this is a question of degree: whether a private party should be deemed an agent or instrument of the Government necessarily turns on the "degree" of the Government's participation in the private party's activities. 489 U.S. at 614. The dispositive question is "whether the State has exercised coercive power or has provided such significant encouragement that the choice must in law be deemed to be that of the State." *VDARE Fund v. City of Colo. Springs*, 11 F.4th 1151, 1161 (10th Cir. 2021).

The Supreme Court found there was not enough "significant encouragement" by the Government in *American Manufacturers Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999). This case involved the constitutionality of a Pennsylvania worker's compensation statute that authorized, but did not require, insurers to withhold payments for the treatment of work-related injuries pending a "utilization" review of whether the treatment was reasonable and necessary. The plaintiffs' argument was that by amending the statute to grant the utilization review (an option they previously did not have), the State purposely encouraged insurers to withhold payments for disputed medical treatment. The Supreme Court found this type of encouragement was not enough for state action.

AMERICAN OVERSIGHT

The United States Court of Appeal for the Fifth Circuit has also addressed the issue of government coercion or encouragement. For example, in *La. Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317 (5th Cir. 2020), the Sons of Confederate Veterans applied to march in a city parade that was coordinated by a private business association. The Mayor sent a letter asking the private business to prohibit the display of the Confederate battle flag. After the plaintiff's request to march in the parade was denied, the plaintiff filed suit and argued the Mayor's letter was "significant encouragement" to warrant state action. The Fifth Circuit found the letter was not "significant encouragement."

In determining whether the Government's words or actions could reasonably be interpreted as an implied threat, courts examine a number of factors, including: (1) the Defendant's regulatory or other decision-making authority over the targeted entities; (2) whether the government actors actually exercised regulatory authority over the targeted entities; (3) whether the language of the alleged threatening statements could reasonably be perceived as a threat; and (4) whether any of the targeted entities reacted in a manner evincing the perception of implicit threat. *Id.* at 114. As noted above, a public official's threat to stifle protected speech is actionable under the First Amendment and can be enjoined, even if the threat turns out to be empty. *Backpage.com, LLC v. Dart*, 807 F.3d 229, 230-31 (7th Cir. 2015); *Okwedy v. Molinari*, 333 F.3d 339, 340-41 (2d. Cir. 2003).

The closest factual case to the present situation is *O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023). In *O'Handley*, the plaintiff maintained that a California agency was responsible for the moderation of his posted content. The plaintiff pointed to the agency's mission to prioritize working closely with social-media companies to be "proactive" about misinformation and the flagging of one of his Twitter posts as "disinformation." The Ninth Circuit rejected the argument

AMERICAN OVERSIGHT

that the agency had provided "significant encouragement" to Twitter to suppress speech. In rejecting this argument, the Ninth Circuit stated the "critical question" in evaluating the "significant encouragement" theory is "whether the government's encouragement is so significant that we should attribute the private party's choice to the State…" *Id.* at 1158.

Defendants cited many cases in support of their argument that Plaintiffs have not shown significant coercion or encouragement. *See VDARE Found v. City of Colo. Springs*, 11 F.4th 1151 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 1208 (2022) (city's decision not to provide "support or resources" to plaintiff's event was not "such significant encouragement" to transform a private venue's decision to cancel the event into state action); *S.H.A.R.K. v. Metro Park Serving Summit Cnty.*, 499 F.3d 553 (6th Cir. 2007) (government officials' requests were "not the type of significant encouragement" that would render agreeing to those requests to be state action); *Campbell v. PMI Food Equip, Grp., Inc.*, 509 F.3d 776 (6th Cir. 2007) (no state action where government entities did nothing more than authorize and approve a contract that provided tax benefits or incentives conditioned on the company opening a local plant); *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442 (10th Cir. 1995) (payments under government contracts and the receipt of government grants and tax benefits are insufficient to establish a symbiotic relationship between the government and a private entity). Ultimately, Defendants contend that Plaintiffs have not shown that the choice to suppress free speech must in law be deemed to be that of the Government. This Court disagrees.

The Plaintiffs are likely to succeed on the merits on their claim that the United States Government, through the White House and numerous federal agencies, pressured and encouraged social-media companies to suppress free speech. Defendants used meetings and communications with social-media companies to pressure those companies to take down, reduce, and suppress the

AMERICAN OVERSIGHT

free speech of American citizens. They flagged posts and provided information on the type of posts they wanted suppressed. They also followed up with directives to the social-media companies to provide them with information as to action the company had taken with regard to the flagged post. This seemingly unrelenting pressure by Defendants had the intended result of suppressing millions of protected free speech postings by American citizens. In response to Defendants' arguments, the Court points out that this case has much more government involvement than any of the cases cited by Defendants, as clearly indicated by the extensive facts detailed above. If there were ever a case where the "significant encouragement" theory should apply, this is it.

What is really telling is that virtually all of the free speech suppressed was "conservative" free speech. Using the 2016 election and the COVID-19 pandemic, the Government apparently engaged in a massive effort to suppress disfavored conservative speech. The targeting of conservative speech indicates that Defendants may have engaged in "viewpoint discrimination," to which strict scrutiny applies. *See Simon & Schuster, Inc.*, 505 U.S. 105 (1991).

In addition to the "significant encouragement" theory, the Government may also be held responsible for private conduct if the Government exercises coercive power over the private party in question. *Blum*, 457 U.S. at 1004. Here, Defendants argue that not only must there be coercion, but the coercion must be targeted at specific actions that harmed Plaintiffs. *Bantam Books v. Sullivan*, 372 U.S. 58 (1963) (where a state agency threatened prosecution if a distributor did not remove certain designated books or magazines it distributed that the state agency had declared objectionable); *see also Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015) (where a sheriff's letter demanded that two credit card issuers prohibit the use of their credit cards to purchase any ads on a particular website containing advertisements for adult services); *Okwedy v.*

AMERICAN OVERSIGHT

Molinari, 333 F.3d 339 (2d Cir. 2003) (per curium) (where a municipal official allegedly pressured a billboard company to take down a particular series of signs he found offensive).

The Defendants further argue they only made requests to the social-media companies, and that the decision to modify or suppress content was each social-media company's independent decision. However, when a state has so involved itself in the private party's conduct, it cannot claim the conduct occurred as a result of private choice, even if the private party would have acted independently. *Peterson v. City of Greenville*, 373 U.S. 244, 247–248 (1963).

Therefore, the question is not what decision the social-media company would have made, but whether the Government "so involved itself in the private party's conduct" that the decision is essentially that of the Government. As exhaustedly listed above, Defendants "significantly encouraged" the social-media companies to such extent that the decision should be deemed to be the decisions of the Government. The White House Defendants and the Surgeon General Defendants additionally engaged in coercion of social-media companies to such extent that the decisions of the social-media companies should be deemed that of the Government. It simply makes no difference what decision the social-media companies would have made independently of government involvement, where the evidence demonstrates the wide-scale involvement seen here.

(1) White House Defendants

The Plaintiffs allege that by use of emails, public and private messages, public and private meetings, and other means, White House Defendants have "significantly encouraged" and "coerced" social-media platforms to suppress protected free speech on their platforms.

AMERICAN OVERSIGHT

The White House Defendants acknowledged at oral arguments that they did not dispute the authenticity or the content of the emails Plaintiffs submitted in support of their claims.[600] However, they allege that the emails do not show that the White House Defendants either coerced or significantly encouraged social-media platforms to suppress content of social-media postings. White House Defendants argue instead that they were speaking with social-media companies about promoting more accurate COVID-19 information and to better understand what action the companies were taking to curb the spread of COVID-19 misinformation.

White House Defendants further argue they never demanded the social-media companies to suppress postings or to change policies, and the changes were due to the social-media companies' own independent decisions. They assert that they did not make specific demands via the White House's public statements and four "asks"[601] of social-media companies.[602] Defendants contend the four "asks" were "recommendations," not demands. Additionally, Defendants argue President Biden's July 16, 2021 "they're killing people" comment was clarified on July 19, 2021, to reflect that President Biden was talking about the "Disinformation Dozen," not the social-media companies.

Although admitting White House employee Flaherty expressed frustration at times with social-media companies, White House Defendants contend Flaherty sought to better understand the companies' policies with respect to addressing the spread of misinformation and hoped to find out what the Government could do to help. Defendants contend Flaherty felt such frustration

[600] [Doc. No. 288 at 164–65]
[601] The White House four "asks" are: (1) measure and publicly share the impact of misinformation on their platform; (2) create a robust enforcement strategy; (3) take faster action against harmful posts; and (4) promote quality information sources in their feed algorithm.
[602] [Doc. No. 10-1 at 377–78]

AMERICAN OVERSIGHT

because some of the things the social-media-companies told him were inconsistent with what others told him, compounded with the urgency of the COVID-19 pandemic.

Explicit threats are an obvious form of coercion, but not all coercion need be explicit. The following illustrative specific actions by Defendants are examples of coercion exercised by the White House Defendants:

(a) "Cannot stress the degree to which this needs to be resolved immediately. Please remove this account immediately."[603]

(b) Accused Facebook of causing "political violence" by failing to censor false COVID-19 claims.[604]

(c) "You are hiding the ball."[605]

(d) "Internally we have been considering our options on what to do about it."[606]

(e) "I care mostly about what actions and changes you are making to ensure you're not making our country's vaccine hesitancy problem worse."[607]

(f) "This is exactly why I want to know what "Reduction" actually looks like – if "reduction" means pumping our most vaccine hesitance audience with Tucker Carlson saying it does not work… then… I'm not sure it's reduction."[608]

(g) Questioning how the Tucker Carlson video had been "demoted" since there were 40,000 shares.[609]

(h) Wanting to know why Alex Berenson had not been kicked off Twitter because Berenson was the epicenter of disinformation that radiated outward to the persuadable public.[610] "We want to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better. Noted that vaccine hesitancy was a concern. That is shared by the highest ('and I mean the highest') levels of the White House."'[611]

---

[603] [II. A.]
[604] [Id. A. (5)]
[605] [Id. A. (10)]
[606] [Id.]
[607] [Id. A. (11)]
[608] [Id. A. (12)]
[609] [Id. A. (15)]
[610] [Id. A. (16)]
[611] [Id. A. (17)]

AMERICAN OVERSIGHT

(i) After sending to Facebook a document entitled "Facebook COVID-19 Vaccine Misinformation Brief, which recommends much more aggressive censorship by Facebook. Flaherty told Facebook sending the Brief was not a White House endorsement of it, but "this is circulating around the building and informing thinking."[612]

(j) Flaherty stated: "Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach and how quickly?"[613]

(k) Flaherty told Facebook: "Are you guys fucking serious" I want an answer on what happened here and I want it today."[614]

(l) Surgeon General Murthy stated: "We expect more from our technology companies. We're asking them to operate with greater transparency and accountability. We're asking them to monitor information more closely. We're asking them to consistently take action against misinformation super-spreaders on their platforms."[615]

(m) White House Press Secretary Psaki stated: "we are in regular touch with these social-media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team. We're flagging problematic posts for Facebook that spread disinformation. Psaki also stated one of the White House's "asks" of social-media companies was to "create a robust enforcement strategy."[616]

(n) When asked about what his message was to social-media platforms when it came to COVID-19, President Biden stated: "they're killing people. Look, the only pandemic we have is among the unvaccinated and that – they're killing people."[617]

(o) Psaki stated at the February 1, 2022, White House Press Conference that the White House wanted every social-media platform to do more to call out misinformation and disinformation and to uplift accurate information.[618]

(p) "Hey folks, wanted to flag the below tweet and am wondering if we can get moving on the process of having it removed. ASAP"[619]

(q) "How many times can someone show false COVID-19 claims before being removed?"

---

[612] [Id.]
[613] [Id at A. (19)]
[614] [Id.]
[615] [Id.]
[616] [Id.]
[617] [Id.]
[618] [Id. at A. (24)]
[619] [Doc. No. 174-1 at 1]

AMERICAN OVERSIGHT

(r) "I've been asking you guys pretty directly over a series of conversations if the biggest issues you are seeing on your platform when it comes to vaccine hesitancy and the degree to which borderline content- as you define it, is playing a role."[620]

(s) "I am not trying to play 'gotcha' with you. We are gravely concerned that your service is one of the top drivers of vaccine hesitancy-period."[621]

(t) "You only did this, however after an election that you helped increase skepticism in and an insurrection which was plotted, in large part, on your platform."[622]

(u) "Seems like your 'dedicated vaccine hesitancy' policy isn't stopping the disinfo dozen." [623]

(v) White House Communications Director, Kate Bedingfield's announcement that "the White House is assessing whether social-media platforms are legally liable for misinformation spread on their platforms, and examining how misinformation fits into the liability protection process by Section 230 of The Communication Decency Act."[624]

These actions are just a few examples of the unrelenting pressure the Defendants exerted against social-media companies. This Court finds the above examples demonstrate that Plaintiffs can likely prove that White House Defendants engaged in coercion to induce social-media companies to suppress free speech.

With respect to 47 U.S.C. § 230, Defendants argue that there can be no coercion for threatening to revoke and/or amend Section 230 because the call to amend it has been bipartisan. However, Defendants combined their threats to amend Section 230 with the power to do so by holding a majority in both the House of Representatives and the Senate, and in holding the Presidency. They also combined their threats to amend Section 230 with emails, meetings, press conferences, and intense pressure by the White House, as well as the Surgeon General Defendants. Regardless, the fact that the threats to amend Section 230 were bipartisan makes it even more

[620] [Id. at 11]
[621] [Id.]
[622] [Doc. No. 174-1 at 17–20]
[623] [Id. at 41]
[624] [Doc. No. 10-1 at 477–78]

AMERICAN OVERSIGHT

likely that Defendants had the power to amend Section 230. All that is required is that the government's words or actions "could reasonably be interpreted as an implied threat." *Cuomo*, 350 F. Supp. 3d at 114. With the Supreme Court recently making clear that Section 230 shields social-media platforms from legal responsibility for what their users post, *Gonzalez v. Google*, 143 S. Ct. 1191 (2023), Section 230 is even more valuable to these social-media platforms. These actions could reasonably be interpreted as an implied threat by the Defendants, amounting to coercion.

Specifically, the White House Defendants also allegedly exercised significant encouragement such that the actions of the social-media companies should be deemed to be that of the government. The White House Defendants used emails, private portals, meetings, and other means to involve itself as "partners" with social-media platforms. Many emails between the White House and social-media companies referred to themselves as "partners." Twitter even sent the White House a "Partner Support Portal" for expedited review of the White House's requests. Both the White House and the social-media companies referred to themselves as "partners" and "on the same team" in their efforts to censor disinformation, such as their efforts to censor "vaccine hesitancy" spread. The White House and the social-media companies also demonstrated that they were "partners" by suppressing information that did not even violate the social-media companies' own policies.

Further, White House Defendants constantly "flagged" for Facebook and other social-media platforms posts the White House Defendants considered misinformation. The White House demanded updates and reports of the results of their efforts to suppress alleged disinformation, and the social-media companies complied with these demands. The White House scheduled numerous Zoom and in-person meetings with social-media officials to keep each other informed about the companies' efforts to suppress disinformation.

AMERICAN OVERSIGHT

The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied. The Court finds that this amounts to coercion or encouragement sufficient to attribute the White House's actions to the social-media companies, such that Plaintiffs are likely to succeed on the merits against the White House Defendants.

(2) Surgeon General Defendants

Plaintiffs allege that Surgeon General Murthy and his office engaged in a pressure campaign parallel to, and often overlapping with, the White House Defendants' campaign directed at social-media platforms. Plaintiffs further allege the Surgeon General Defendants engaged in numerous meetings and communications with social-media companies to have those companies suppress alleged disinformation and misinformation posted on their platforms.

The Surgeon General Defendants argue that the Surgeon General's role is primarily to draw attention to public health matters affecting the nation. The SG took two official actions in 2021 and in 2022. In July 2021, the Surgeon General issued a "Surgeon General's Advisory." In March 2022, the Surgeon General issued a Request For Information ("RFI"). Surgeon General Defendants argue that the Surgeon General's Advisory did not require social-media companies to censor information or make changes in their policies. Surgeon General Defendants further assert that the RFI was voluntary and did not require the social-media companies to answer.

Additionally, the Surgeon General Defendants contend they only held courtesy meetings with social-media companies, did not flag posts for censorship, and never worked with social-media companies to moderate their policies. Surgeon General Defendants also deny that they were involved with the Virality Project.

AMERICAN OVERSIGHT

As with the White House Defendants, this Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment free speech claim against the Surgeon General Defendants. Through public statements, internal emails, and meetings, the Surgeon General Defendants exercised coercion and significant encouragement such that the decisions of the social-media platforms and their actions suppressing health disinformation should be deemed to be the decisions of the government. Importantly, the suppression of this information was also likely prohibited content and/or viewpoint discrimination, entitling Plaintiffs to strict scrutiny.

The Surgeon General Defendants did pre-rollout calls with numerous social-media companies prior to publication of the Health Advisory on Misinformation. The Advisory publicly called on social-media companies "to do more" against COVID misinformation Superspreaders. Numerous calls and meetings took place between Surgeon General Defendants and private social-media companies. The "misinformation" to be suppressed was whatever the government deemed misinformation.

The problem with labeling certain discussions about COVID-19 treatment as "health misinformation" was that the Surgeon General Defendants suppressed alternative views to those promoted by the government. One of the purposes of free speech is to allow discussion about various topics so the public may make informed decisions. Health information was suppressed, and the government's view of the proper treatment for COVID-19 became labeled as "the truth." Differing views about whether COVID-19 vaccines worked, whether taking the COVID-19 vaccine was safe, whether mask mandates were necessary, whether schools and businesses should have been closed, whether vaccine mandates were necessary, and a host of other topics were suppressed. Without a free debate about these issues, each person is unable to decide for himself or herself the proper decision regarding their health. Each United States citizen has the right to

AMERICAN OVERSIGHT

decide for himself or herself what is true and what is false. The Government and/or the OSG does not have the right to determine the truth.

The Surgeon General Defendants also engaged in a pressure campaign with the White House Defendants to pressure social-media companies to suppress health information contrary to the Surgeon General Defendants' views. After the Surgeon General's press conference on July 15, 2021, the Surgeon General Defendants kept the pressure on social-media platforms via emails, private meetings, and by requiring social-media platforms to report on actions taken against health disinformation.

The RFI by the Surgeon General Defendants also put additional pressure on social-media companies to comply with the requests to suppress free speech. The RFI sought information from private social-media companies to provide information about the spread of misinformation. The RFI stated that the office of the Surgeon General was expanding attempts to control the spread of misinformation on social-media platforms. The RFI also sought information about social-media censorship policies, how they were enforced, and information about disfavored speakers.

Taking all of this evidence together, this Court finds the Surgeon General Defendants likely engaged in both coercion and significant encouragement to such an extent that the decisions of private social-media companies should be deemed that of the Surgeon General Defendants. The Surgeon General Defendants did much more than engage in Government speech: they kept pressure on social-media companies with pre-rollout meetings, follow-up meetings, and RFI. Thus, Plaintiffs are likely to succeed on the merits of their First Amendment claim against these Defendants.

AMERICAN OVERSIGHT

(3) CDC Defendants

Plaintiffs allege that the CDC Defendants have engaged in a censorship campaign, together with the White House and other federal agencies, to have free speech suppressed on social-media platforms. Plaintiffs allege that working closely with the Census Bureau, the CDC flagged supposed "misinformation" for censorship on the platforms. Plaintiffs further allege that by using the acronym "BOLO," the CDC Defendants told social-media platforms what health claims should be censored as misinformation.

In opposition, Defendants assert that the CDC's mission is to protect the public's health. Although the CDC Defendants admit to meeting with and sending emails to social-media companies, the CDC Defendants argue they were responding to requests by the companies for science-based public health information, proactively alerting the social-media companies about disinformation, or advising the companies where to find accurate information. The Census Bureau argues the Interagency Agreement, entered into with the CDC in regard to COVID-19 misinformation, has expired, and that it is no longer participating with the CDC on COVID-19 misinformation issues. The CDC Defendants further deny that they directed any social-media companies to remove posts or to change their policies.

Like the White House Defendants and Surgeon General Defendants, the Plaintiffs are likely to succeed on the merits of Plaintiffs' First Amendment free speech claim against the CDC Defendants. The CDC Defendants through emails, meetings, and other communications, seemingly exercised pressure and gave significant encouragement such that the decisions of the social-media platforms to suppress information should be deemed to be the decisions of the Government. The CDC Defendants coordinated meetings with social-media companies, provided examples of alleged disinformation to be suppressed, questioned the social-media companies about

AMERICAN OVERSIGHT

how it was censoring misinformation, required reports from social-media companies about disinformation, told the social-media companies whether content was true or false, provided BOLO information, and used a Partner Support Portal to report disinformation. Much like the other Defendants, described above, the CDC Defendants became "partners" with social-media platforms, flagging and reporting statements on social media Defendants deemed false. Although the CDC Defendants did not exercise coercion to the same extent as the White House and Surgeon General Defendants, their actions still likely resulted in "significant encouragement" by the government to suppress free speech about COVID-19 vaccines and other related issues.

Various social-media platforms changed their content-moderation policies to require suppression of content that was deemed false by CDC and led to vaccine hesitancy. The CDC became the "determiner of truth" for social-media platforms, deciding whether COVID-19 statements made on social media were true or false. And the CDC was aware it had become the "determiner of truth" for social-media platforms. If the CDC said a statement on social media was false, it was suppressed, in spite of alternative views. By telling social-media companies that posted content was false, the CDC Defendants knew the social-media company was going to suppress the posted content. The CDC Defendants thus likely "significantly encouraged" social-media companies to suppress free speech.

Based on the foregoing examples of significant encouragement and coercion by the CDC Defendants, the Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CDC Defendants.

(4) NIAID Defendants

Plaintiffs allege that NIAID Defendants engaged in a series of campaigns to discredit and procure the censorship of disfavored viewpoints on social media. Plaintiffs allege that Dr. Fauci

AMERICAN OVERSIGHT

engaged in a series of campaigns to suppress speech regarding the Lab-Leak theory of COVID-19's origin, treatment using hydroxychloroquine, the GBD, the treatment of COVID-19 with Ivermectin, the effectiveness of mask mandates, and the speech of Alex Berenson.

In opposition, Defendants assert that the NIAID Defendants simply supports research to better understand, treat, and prevent infectious, immunologic, and allergic diseases and is responsible for responding to emergency public health threats. The NIAID Defendants argue that they had limited involvement with social-media platforms and did not meet with or contact the platforms to change their content or policies. The NIAID Defendants further argue that the videos, press conferences, and public statements by Dr. Fauci and other employees of NIAID was government speech.

This Court agrees that much of what the NIAID Defendants did was government speech. However, various emails show Plaintiffs are likely to succeed on the merits through evidence that the motivation of the NIAID Defendants was a "take down" of protected free speech. Dr. Francis Collins, in an email to Dr. Fauci[625] told Fauci there needed to be a "quick and devastating take down" of the GBD—the result was exactly that. Other email discussions show the motivations of the NIAID were to have social-media companies suppress these alternative medical theories. Taken together, the evidence shows that Plaintiffs are likely to succeed on the merits against the NIAID Defendants as well.

(5) FBI Defendants

Plaintiffs allege that the FBI Defendants also suppressed free speech on social-media platforms, with the FBI and FBI's FITF playing a key role in these censorship efforts.

[625] [Doc. No. 207-6]

AMERICAN OVERSIGHT

In opposition, Defendants assert that the FBI Defendants' specific job duties relate to foreign influence operations, including attempts by foreign governments to influence U.S. elections. Based on the alleged foreign interference in the 2016 U.S. Presidential election, the FBI Defendants argue that, through their meetings and emails with social-media companies, they were attempting to prevent foreign influence in the 2020 Presidential election. The FBI Defendants deny any attempt to suppress and/or change the social-media companies' policies with regard to domestic speech. They further deny that they mentioned Hunter Biden or a "hack and leak" foreign operation involving Hunter Biden.

According to the Plaintiffs' allegations detailed above, the FBI had a 50% success rate regarding social media's suppression of alleged misinformation, and it did no investigation to determine whether the alleged disinformation was foreign or by U.S. citizens. The FBI's failure to alert social-media companies that the Hunter Biden laptop story was real, and not mere Russian disinformation, is particularly troubling. The FBI had the laptop in their possession since December 2019 and had warned social-media companies to look out for a "hack and dump" operation by the Russians prior to the 2020 election. Even after Facebook specifically asked whether the Hunter Biden laptop story was Russian disinformation, Dehmlow of the FBI refused to comment, resulting in the social-media companies' suppression of the story. As a result, millions of U.S. citizens did not hear the story prior to the November 3, 2020 election. Additionally, the FBI was included in Industry meetings and bilateral meetings, received and forwarded alleged misinformation to social-media companies, and actually mislead social-media companies in regard to the Hunter Biden laptop story. The Court finds this evidence demonstrative of significant encouragement by the FBI Defendants.

AMERICAN OVERSIGHT

Defendants also argue that Plaintiffs are attempting to create a "deception" theory of government involvement with regards to the FBI Defendants. Plaintiffs allege the FBI told the social-media companies to watch out for Russian disinformation prior to the 2020 Presidential election and then failed to tell the companies that the Hunter Biden laptop was not Russian disinformation. The Plaintiffs further allege Dr. Fauci colluded with others to cover up the Government's involvement in "gain of function" research at the Wuhan lab in China, which may have resulted in the creation of the COVID-19 pandemic.

Although this Court agrees there is no specified "deception" test for government action, a state may not induce private persons to accomplish what it is constitutionally forbidden to accomplish. *Norwood*, 413 U.S. at 455. It follows, then, that the government may not deceive a private party either—it is just another form of coercion. The Court has evaluated Defendants' conduct under the "coercion" and/or "significant encouragement" theories of government action, and finds that the FBI Defendants likely exercised "significant encouragement" over social-media companies.

Through meetings, emails, and in-person contacts, the FBI intrinsically involved itself in requesting social-media companies to take action regarding content the FBI considered to be misinformation. The FBI additionally likely misled social-media companies into believing the Hunter Biden laptop story was Russian disinformation, which resulted in suppression of the story a few weeks prior to the 2020 Presidential election. Thus, Plaintiffs are likely to succeed in their claims that the FBI exercised "significant encouragement" over social-media platforms such that the choices of the companies must be deemed to be that of the Government.

AMERICAN OVERSIGHT

(5) CISA Defendants

Plaintiffs allege the CISA Defendants served as a "nerve center" for federal censorship efforts by meeting routinely with social-media platforms to increase censorship of speech disfavored by federal officials, and by acting as a "switchboard" to route disinformation concerns to social-media platforms.

In response, the CISA Defendants maintain that CISA has a mandate to coordinate with federal and non-federal entities to carry out cybersecurity and critical infrastructure activities. CISA previously designated election infrastructure as a critical infrastructure subsector. CISA also collaborates with state and local election officials; as part of its duties, CISA coordinates with the EIS-GCC, which is comprised of state, local, and federal governmental departments and agencies. The EI-SSC is comprised of owners or operators with significant business or operations in U.S. election infrastructure systems or services. After the 2020 election, the EI-SCC and EIS-GCC launched a Joint Managing Mis/Disinformation Group to coordinate election infrastructure security efforts. The CISA Defendants argue CISA supports the Joint Managing Mis-Disinformation Group but does not coordinate with the EIP or the CIS. Despite DHS providing financial assistance to the CIS through a series of cooperative agreement awards managed by CISA, the CISA Defendants assert that the work scope funded by DHS has not involved the CIS performing disinformation-related tasks.

Although the CISA Defendants admit to being involved in "switchboarding" work during the 2020 election cycle, CISA maintains it simply referred the alleged disinformation to the social-media companies, who made their own decisions to suppress content. CISA maintains it included a notice with each referral to the companies, which stated that CISA was not demanding censorship. CISA further maintains it discontinued its switchboarding work after the 2020 election

AMERICAN OVERSIGHT

cycle and has no intention to engage in switchboarding for the next election.[626] CISA further argues that even though it was involved with USG-Industry meetings with other federal agencies and social-media companies, they did not attempt to "push" social-media companies to suppress content or to change policies.

The Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CISA Defendants. The CISA Defendants have likely exercised "significant encouragement" with social-media platforms such that the choices of the social-media companies must be deemed to be that of the government. Like many of the other Defendants, the evidence shows that the CISA Defendants met with social-media companies to both inform and pressure them to censor content protected by the First Amendment. They also apparently encouraged and pressured social-media companies to change their content-moderation policies and flag disfavored content.

But the CISA Defendants went even further. CISA expanded the word "infrastructure" in its terminology to include "cognitive" infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media. The word "cognitive" is an adjective that means "relating to cognition." "Cognition" means the mental action or process of acquiring knowledge and understanding through thought, experiences, and the senses.[627] The Plaintiffs are likely to succeed on the merits on its claim that the CISA Defendants believe they had a mandate to control the process of acquiring knowledge. The CISA Defendants engaged with Stanford University and the University of Washington to form the EIP, whose purpose was to allow state and local officials to report alleged election misinformation so it could be forwarded to the social-

[626] However, at oral argument, CISA attorneys were unable to verify whether or not CISA would be involved in switchboarding during the 2024 election. [Doc. No. 288 at 122]
[627] Google English Dictionary

AMERICAN OVERSIGHT

media platforms to review. CISA used a CISA-funded non-profit organization, the CIS, to perform the same actions. CISA used interns who worked for the Stanford Internal Observatory, which is part of the EIP, to address alleged election disinformation. All of these worked together to forward alleged election misinformation to social-media companies to view for censorship. They also worked together to ensure the social-media platforms reported back to them on what actions the platforms had taken. And in this process, no investigation was made to determine whether the censored information was foreign or produced by U.S. citizens.

According to DiResta, head of EIP, the EIP was designed "to get around unclear legal authorities, including very real First Amendment questions that would arise if CISA or the other government agencies were to monitor and flag information for censorship on social media."[628] Therefore, the CISA Defendants aligned themselves with and partnered with an organization that was designed to avoid Government involvement with free speech in monitoring and flagging content for censorship on social-media platforms.

At oral arguments on May 26, 2023, Defendants argued that the EIP operated independently of any government agency. The evidence shows otherwise: the EIP was started when CISA interns came up with the idea; CISA connected the EIP with the CIS, which is a CISA-funded non-profit that channeled reports of misinformation from state and local government officials to social-media companies; CISA had meetings with Stanford Internet Observatory officials (a part of the EIP), and both agreed to "work together"; the EIP gave briefings to CISA; and the CIS (which CISA funds) oversaw the Multi-State Information Sharing and Analysis Center ("MS-ISAC") and the Election Infrastructure Information Sharing and Analysis Center

[628] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

("EI-ISAC"), both of which are organizations of state and local governments that report alleged election misinformation.

CISA directs state and local officials to CIS and connected the CIS with the EIP because they were working on the same mission and wanted to be sure they were all connected. CISA served as a mediating role between CIS and EIP to coordinate their efforts in reporting misinformation to social-media platforms, and there were direct email communications about reporting misinformation between EIP and CISA. Stamos and DiResta of the EIP also have roles in CISA on CISA advisory committees. EIP identifies CISA as a "partner in government." The CIS coordinated with EIP regarding online misinformation. The EIP publication, "The Long Fuse,"[629] states the EIP has a focus on election misinformation originating from "domestic" sources across the United States.[630] EIP further stated that the primary repeat spreaders of false and misleading narratives were "verified blue-checked accounts belonging to partisan media outlets, social-media influencers, and political figures, including President Trump and his family."[631] The EIP further disclosed it held its first meeting with CISA to present the EIP concept on July 9, 2020, and EIP was officially formed on July 26, 2020, "in consultation with CISA."[632] The Government was listed as one of EIP's Four Major Stakeholder Groups, which included CISA, the GEC, and ISAC.[633]

As explained, the CISA Defendants set up a "switchboarding" operation, primarily consisting of college students, to allow immediate reporting to social-media platforms of alleged election disinformation. The "partners" were so successful with suppressing election

[629] [Doc. No. 209-2]
[630] [Id. at 9]
[631] [Id. at 12]
[632] [Id. at 20–21]
[633] [Id. at 30]

AMERICAN OVERSIGHT

disinformation, they later formed the Virality Project, to do the same thing with COVID-19 misinformation that the EIP was doing for election disinformation. CISA and the EIP were completely intertwined. Several emails from the switchboarding operation sent by intern Pierce Lowary shows Lowary directly flagging posted content and sending it to social-media companies. Lowary identified himself as "working for CISA" on the emails.[634]

On November 21, 2021, CISA Director Easterly stated: "We live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if people get to pick their own facts." The Free Speech Clause was enacted to prohibit just what Director Easterly is wanting to do: allow the government to pick what is true and what is false. The Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CISA Defendants for "significantly encouraging" social-media companies to suppress protected free speech.

(5) State Department Defendants

Plaintiffs allege the State Department Defendants, through the State Department's GEC, were also involved in suppressing protected speech on social-media platforms.

In response, the State Department Defendants argue that they, along with the GEC, play a critical role in coordinating the U.S. government efforts to respond to foreign influence. The State Department Defendants argue that they did not flag specific content for social-media companies and did not give the company any directives. The State Department Defendants also argue that they do not coordinate with or work with the EIP or the CIS.

The Court finds that Plaintiffs are also likely to succeed on the merits regarding their First Amendment Free Speech Clause against the State Department Defendants. For many of the same reasons the Court reached its conclusion as to the CISA Defendants, the State Department

[634] [Doc. No. 227-2 at 15, 23, 42, 65 & 78]

AMERICAN OVERSIGHT

Defendants have exercised "significant encouragement" with social-media platforms, such that the choices of the social-media companies should be deemed to be that of the government. As discussed previously, both CISA and the GEC were intertwined with the VP, EIP, and Stanford Internet Observatory.

The VP, EIP, and Stanford Internet Observatory are not defendants in this proceeding. However, their actions are relevant because government agencies have chosen to associate, collaborate, and partner with these organizations, whose goals are to suppress protected free speech of American citizens. The State Department Defendants and CISA Defendants both partnered with organizations whose goals were to "get around" First Amendment issues.[635] In partnership with these non-governmental organizations, the State Department Defendants flagged and reported postings of protected free speech to the social-media companies for suppression. The flagged content was almost entirely from political figures, political organizations, alleged partisan media outlets, and social-media all-stars associated with right-wing or conservative political views, demonstrating likely "viewpoint discrimination." Since only conservative viewpoints were allegedly suppressed, this leads naturally to the conclusion that Defendants intended to suppress only political views they did not believe in. Based on this evidentiary showing, Plaintiffs are likely to succeed on the merits of their First Amendment claims against the State Department Defendants.

(6) Other Defendants

Other Defendants in this proceeding are the U.S. Food and Drug Administration, U. S. Department of Treasury, U.S. Election Assistance Commission, U. S. Department of Commerce, and employees Erica Jefferson, Michael Murray, Wally Adeyemo, Steven Frid, Brad Kimberly, and Kristen Muthig. Plaintiffs confirmed at oral argument that they are not seeking a preliminary

[635] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

injunction against these Defendants. Additionally, Plaintiffs assert claims against the Disinformation Governance Board ("DGB") and its Director Nina Jankowicz. Defendants have provided evidence that the DGB has been disbanded, so any claims against these Defendants are moot. Thus, this Court will not address the issuance of an injunction against any of these Defendants.

ii. Joint Participation

The Plaintiffs contend that the Defendants are not only accountable for private conduct that they coerced or significantly encouraged, but also for private conduct in which they actively participated as "joint participants." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961). Although most often "joint participation" occurs through a conspiracy or collusive behavior, *Hobbs v. Hawkins*, 968 F.2d 471, 480 (5th Cir. 1992), even without a conspiracy, when a plaintiff establishes the government is responsible for private action arising out of "pervasive entwinement of public institutions and public officials in the private entity's composition and workings." *Brentwood Academy. v. Tennessee Secondary Sch. Athletic Ass'n.*, 531 U. S. 288, 298 (2001).

Under the "joint action" test, the Government must have played an indispensable role in the mechanism leading to the disputed action. *Frazier v. Bd. Of Trs. Of N.W. Miss. Reg.'l Med. Ctr.*, 765 F.2d 1278, 1287-88 (5th Cir.), *amended*, 777 F.2d 329 (5th Cir. 1985). When a plaintiff establishes "the existence of a conspiracy involving state action," the government becomes responsible for all constitutional violations committed in furtherance of the conspiracy by a party to the conspiracy. *Armstrong v. Ashley*, 60 F.4th 262, (5th Cir. 2023). Conspiracy can be charged as the legal mechanism through which to impose liability on each and all of the defendants without

AMERICAN OVERSIGHT

regard to the person doing the particular act that deprives the plaintiff of federal rights. *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1187 (5th Cir. 1990).

Much like conspiracy and collusion, joint activity occurs whenever the government has "so far insinuated itself" into private affairs as to blur the line between public and private action. *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 (1974). To become "pervasively entwined" in a private entity's workings, the government need only "significantly involve itself in the private entity's actions and decision-making"; it is not necessary to establish that "state actors … literally 'overrode' the private entity's independent judgment." Ra*wson v. Recovery Innovations, Inc.*, 975 F.3d 742, 751, 753 (9th Cir. 2020). "Pervasive intertwinement" exists even if the private party is exercising independent judgment. *West v. Atkins*, 487 U.S. 42, 52, n.10 (1988); *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1454 (10th Cir. 1995) (holding that a "substantial degree of cooperative action" can constitute joint action).

For the same reasons as this Court has found Plaintiffs met their burden to show "significant encouragement" by the White House Defendants, the Surgeon General Defendants, the CDC Defendants, the FBI Defendants, the NIAID Defendants, the CISA Defendants, and the State Department Defendants, this Court finds the Plaintiffs are likely to succeed on the merits that these Defendants "jointly participated" in the actions of the private social-media companies as well, by insinuating themselves into the social-media companies' private affairs and blurring the line between public and private action.[636]

However, this Court finds Plaintiffs are not likely to succeed on the merits that the "joint participation" occurred as a result of a conspiracy with the social-media companies. The evidence

[636] It is not necessary to repeat the details discussed in the "significant encouragement" analysis in order to find Plaintiffs have met their initial burden.

AMERICAN OVERSIGHT

thus far shows that the social-media companies cooperated due to coercion, not because of a conspiracy.

This Court finds the White House Defendants, the Surgeon General Defendants, the CDC Defendants, the NIAID Defendants, the FBI Defendants, the CISA Defendants, and the State Department Defendants likely "jointly participated" with the social-media companies to such an extent that said Defendants have become "pervasively entwined" in the private companies' workings to such an extent as to blur the line between public and private action. Therefore, Plaintiffs are likely to succeed on the merits that the government Defendants are responsible for the private social-media companies' decisions to censor protected content on social-media platforms.

iii. Other Arguments

While not admitting any fault in the suppression of free speech, Defendants blame the Russians, COVID-19, and capitalism for any suppression of free speech by social-media companies. Defendants argue the Russian social-media postings prior to the 2016 Presidential election caused social-media companies to change their rules with regard to alleged misinformation. The Defendants argue the Federal Government promoted necessary and responsible actions to protect public health, safety, and security when confronted by a deadly pandemic and hostile foreign assaults on critical election infrastructure. They further contend that the COVID-19 pandemic resulted in social-media companies changing their rules in order to fight related disinformation. Finally, Defendants argue the social-media companies' desire to make money from advertisers resulted in change to their efforts to combat disinformation. In other words, Defendants maintain they had nothing to do with Plaintiffs' censored speech and blamed any suppression of free speech on the Russians, COVID-19, and the companies' desire to make

AMERICAN OVERSIGHT

money. The social-media platforms and the Russians are of course not defendants in this proceeding, and neither are they bound by the First Amendment. The only focus here is on the actions of the Defendants themselves.

Although the COVID-19 pandemic was a terrible tragedy, Plaintiffs assert that it is still not a reason to lessen civil liberties guaranteed by our Constitution. "If human nature and history teaches anything, it is that civil liberties face grave risks when governments proclaim indefinite states of emergency." *Does 1-3 v. Mills*, 142 S. Ct. 17, 20–21 (2021) (Gorsuch, J., dissenting). The "grave risk" here is arguably the most massive attack against free speech in United States history.

Another argument of Defendants is that the previous Administration took the same actions as Defendants. Although the "switchboarding" by CISA started in 2018, there is no indication or evidence yet produced in this litigation that the Trump Administration had anything to do with it. Additionally, whether the previous Administration suppressed free speech on social media is not an issue before this Court and would not be a defense to Defendants even if it were true.

Defendants also argue that a preliminary injunction would restrict the Defendants' right to government speech and would transform government speech into government action whenever the Government comments on public policy matters. The Court finds, however, that a preliminary injunction here would not prohibit government speech. The traditional test used to differentiate government speech from private speech discusses three relevant factors: (1) whether the medium at issue has historically been used to communicate messages from the government; (2) whether the public reasonably interprets the government to be the speaker; and (3) whether the government maintains editorial control over the speech. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 465–80 (2009). A government entity has the right to speak for itself and is entitled to say what it wishes and express the views it wishes to express. The Free Speech Clause restricts government

AMERICAN OVERSIGHT

regulation of private speech; it does not regulate government speech. *Pleasant Grove City, Utah*, 555 U.S. at 468.

The Defendants argue that by making public statements, this is nothing but government speech. However, it was not the public statements that were the problem. It was the alleged use of government agencies and employees to coerce and/or significantly encourage social-media platforms to suppress free speech on those platforms. Plaintiffs point specifically to the various meetings, emails, follow-up contacts, and the threat of amending Section 230 of the Communication Decency Act. Plaintiffs have produced evidence that Defendants did not just use public statements to coerce and/or encourage social-media platforms to suppress free speech, but rather used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech. Content was seemingly suppressed even if it did not violate social-media policies. It is the alleged coercion and/or significant encouragement that likely violates the Free Speech Clause, not government speech, and thus, the Court is not persuaded by Defendants' arguments here.

b. Standing

The United States Constitution, via Article III, limits federal courts' jurisdiction to "cases" and "controversies." *Sample v. Morrison*, 406 F.3d 310, 312 (5th Cir. 2005) (*citing* U.S. Const. art. III, § 2). The "law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435 (2017) (citation omitted). Thus, "the standing question is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99

AMERICAN OVERSIGHT

(1975) (citation and internal quotation marks omitted). The Article III standing requirements apply to claims for injunctive and declaratory relief. *See Seals v. McBee*, 898 F.3d 587, 591 (5th Cir. 2018), *as revised* (Aug. 9, 2018); *Lawson v. Callahan*, 111 F.3d 403, 405 (5th Cir. 1997).

Article III standing is comprised of three essential elements. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016) (citation omitted). "The plaintiff must have (1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* (internal citations omitted). Furthermore, "[a] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester, N.Y.*, 581 U.S. at 439 (citations omitted). However, the presence of one party with standing "is sufficient to satisfy Article III's case-or-controversy requirement." *Texas*, 809 F.3d 134 (*citing Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006)).

In the context of a preliminary injunction, it has been established that "the 'merits' required for the plaintiff to demonstrate a likelihood of success include not only substantive theories but also the establishment of jurisdiction." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). In order to establish standing, the plaintiff must demonstrate that they have encountered or suffered an injury attributable to the defendant's challenged conduct and that such injury is likely to be resolved through a favorable decision. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 (1992). Further, during the preliminary injunction stage, the movant is only required to demonstrate a likelihood of proving standing. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). Defendants raise challenges to each essential element of standing for both the Private Plaintiffs and the States. Each argument will be addressed in turn below. For the reasons stated

AMERICAN OVERSIGHT

herein, the Court finds that the Plaintiffs have demonstrated a likelihood of satisfying Article III's standing requirements.

i. Injury-in-fact

Plaintiffs seeking to establish injury-in-fact must show that they suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (citations and internal quotation marks omitted). For an injury to be "particularized," it must "affect the plaintiff in a personal and individual way." *Id.* (citations and internal quotation marks omitted).

Plaintiffs argue that that they have asserted violations of their First Amendment right to speak and listen freely without government interference.[637] In response, Defendants contend that Plaintiffs' allegations rest on dated declarations that focus on long-past conduct, making Plaintiffs' fears of imminent injury entirely speculative.[638] The Court will first address whether the Plaintiff States are likely to prove an injury-in-fact. Then the court will examine whether the Individual Plaintiffs are likely to prove an injury-in-fact. For the reasons explained below, both the Plaintiff States and Individual Plaintiffs are likely to prove an injury-in-fact.

(1) Plaintiff States

In denying Defendants' Motion to Dismiss,[639] this Court previously found that the Plaintiff States had sufficiently alleged injury-in-fact to satisfy Article III standing under either a direct injury or *parens patriae* theory of standing and that the States were entitled to special solicitude in the standing analysis.[640] At the preliminary injunction stage, the issue becomes whether the Plaintiffs are likely to prove standing. *See Speech First, Inc.*, 979 F.3d, at 330. The evidence

[637] *See* [Doc. No. 214, at 66]
[638] *See* [Doc. No. 266, at 151]
[639] [Doc. No. 128]
[640] [Doc. No. 224, at 20–33]

AMERICAN OVERSIGHT

produced thus far through discovery shows that the Plaintiff States are likely to establish an injury-in-fact through either a *parens patriae* or direct injury theory of standing.

Parens patriae, which translates to "parent of the country," traditionally refers to the state's role as a sovereign and guardian for individuals with legal disabilities. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 600 n.8 (1982) (*quoting* Black's Law Dictionary 1003 (5th ed. 1979)). The term "*parens patriae* lawsuit" has two meanings: it can denote a lawsuit brought by the state on behalf of individuals unable to represent themselves, or a lawsuit initiated by the state to protect its "quasi-sovereign" interests. *Id.* at 600; *see also Kentucky v. Biden*, 23 F.4th 585, 596–98 (6th Cir. 2022); *Chapman v. Tristar Prod., Inc.*, 940 F.3d 299, 305 (6th Cir. 2019). A lawsuit based on the former meaning is known as a "third-party" *parens patriae* lawsuit, and it is clearly established law that states cannot bring such lawsuits against the federal government. *Kentucky*, 23 F.4th at 596. Thus, to have *parens patriae* standing, the Plaintiff States must show a likelihood of establishing an injury to one or more of their quasi-sovereign interests.

In *Snapp*, the United States Supreme Court determined that Puerto Rico had *parens patriae* standing to sue the federal government to safeguard its quasi-sovereign interests. *Snapp*, 458 U.S. at 608. The Court identified two types of injuries to a state's quasi-sovereign interests: one is an injury to a significant portion of the state's population, and the other is the exclusion of the state and its residents from benefiting from participation in the federal system. *Id.* at 607–608. The Court did not establish definitive limits on the proportion of the population that must be affected but suggested that an indication could be whether the injury is something the state would address through its sovereign lawmaking powers. *Id.* at 607. Based on the injuries alleged by Puerto Rico, the Court found that the state had sufficiently demonstrated harm to its quasi-sovereign interests and had *parens patriae* standing to sue the federal government. *Id.* at 609–10.

AMERICAN OVERSIGHT

In *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007), the United States Supreme Court further clarified the distinction between third-party and quasi-sovereign *parens patriae* lawsuits. There, the Court concluded that Massachusetts had standing to sue the EPA to protect its quasi-sovereign interests. The Court emphasized the distinction between allowing a state to protect its citizens from federal statutes (which is prohibited) and permitting a state to assert its rights under federal law (which it has standing to do). *Massachusetts*, 549 U.S. at 520 n.17. Because Massachusetts sought to assert its rights under a federal statute rather than challenge its application to its citizens, the Court determined that the state had *parens patriae* standing to sue the EPA.

Here, the Plaintiff States alleged and have provided ample evidence to support injury to two quasi-sovereign interests: the interest in safeguarding the free-speech rights of a significant portion of their respective populations and the interest in ensuring that they receive the benefits from participating in the federal system. Defendants argue that this theory of injury is too attenuated and that Plaintiffs are unlikely to prove any direct harm to the States' sovereign or quasi-sovereign interests, but the Court does not find this argument persuasive.

Plaintiffs have put forth ample evidence regarding extensive federal censorship that restricts the free flow of information on social-media platforms used by millions of Missourians and Louisianians, and very substantial segments of the populations of Missouri, Louisiana, and every other State.[641] The Complaint provides detailed accounts of how this alleged censorship harms "enormous segments of [the States'] populations." Additionally, the fact that such extensive examples of suppression have been uncovered through limited discovery suggests that the

[641] *See supra*, pp. 8–94 (detailing the extent and magnitude of Defendants' pressure and coercion tactics with social-media companies); *See also* [Doc. No. 214-1, at ¶¶ 1348 (noting that Berenson had nationwide audiences and over 200,000 followers when he was de-platformed on Twitter), 1387 (noting that the Gateway Pundit had more than 1.3 million followers across its social-media accounts before it was suspended), 1397–1409 (noting that Hines has approximately 13,000 followers each on her Health Freedom Louisiana and Reopen Louisiana Facebook pages, approximately 2,000 followers on two other Health Freedom Group Louisiana pages, and that the former Facebook pages have faced increasing censorship penalties and that the latter pages were de-platformed completely), etc.]

AMERICAN OVERSIGHT

censorship explained above could merely be a representative sample of more extensive suppressions inflicted by Defendants on countless similarly situated speakers and audiences, including audiences in Missouri and Louisiana. The examples of censorship produced thus far cut against Defendants' characterization of Plaintiffs' fear of imminent future harm as "entirely speculative" and their description of the Plaintiff States' injuries as "overly broad and generalized grievance[s]."[642] The Plaintiffs have outlined a federal regime of mass censorship, presented specific examples of how such censorship has harmed the States' quasi-sovereign interests in protecting their residents' freedom of expression, and demonstrated numerous injuries to significant segments of the Plaintiff States' populations.

Moreover, the materials produced thus far suggest that the Plaintiff States, along with a substantial segment of their populations, are likely to show that they are being excluded from the benefits intended to arise from participation in the federal system. The U.S. Constitution, like the Missouri and Louisiana Constitutions, guarantees the right of freedom of expression, encompassing both the right to speak and the right to listen. U.S. Const. amend. I; *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756–57 (1976). The United States Supreme Court has acknowledged the freedom of expression as one of the most significant benefits conferred by the federal Constitution. *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."). Plaintiffs have demonstrated that they are likely to prove that federal agencies, actors, and officials in their official capacity are excluding the Plaintiff States

[642] [Doc. No. 266, at 151]

AMERICAN OVERSIGHT

and their residents from this crucial benefit that is meant to flow from participation in the federal system. *See Snapp*, 458 U.S. at 608.

Accordingly, the Court finds that the States have alleged injuries under a *parens patriae* theory of standing because they are likely to prove injuries to the States' quasi-sovereign interests in protecting the constitutionally bestowed rights of their citizens.

Further, Plaintiffs have demonstrated direct censorship injuries that satisfy the requirements of Article III as injuries in fact.[643] Specifically, the Plaintiffs contend that Louisiana's Department of Justice, which encompasses the office of its Attorney General, faced direct censorship on YouTube for sharing video footage wherein Louisianans criticized mask mandates and COVID-19 lockdown measures on August 18, 2021, immediately following the federal Defendants' strong advocacy for COVID-related "misinformation" censorship.[644] Moreover, a Louisiana state legislator experienced censorship on Facebook when he posted content addressing the vaccination of children against COVID-19.[645] Similarly, during public meetings concerning proposed county-wide mask mandates held by St. Louis County, a political subdivision of Missouri, certain citizens openly expressed their opposition to mask mandates. However, YouTube censored the entire videos of four public meetings, removing the content because some citizens expressed the view that masks are ineffective.[646] Therefore, this Court finds that the Plaintiff States have also demonstrated a likelihood of establishing an injury-in-fact under a theory of direct injury sufficient to satisfy Article III.

[643] [Doc. No. 214-1, at ¶¶1428–1430]
[644] [Id. at ¶1428]
[645] [Id. at ¶1429]
[646] [Id. at ¶ 1430]

AMERICAN OVERSIGHT

Accordingly, for the reasons stated above and explained in this Court's ruling on the Motion to Dismiss,[647] the Plaintiff States are likely to succeed on establishing an injury-in-fact under Article III.

(2) Individual Plaintiffs

In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("*SBA List*"), the Supreme Court held that an allegation of future injury may satisfy the Article III injury-in-fact requirement if there is a "substantial risk" of harm occurring. (*quoting Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). In *SBA List*, the petitioner challenged a statute that prohibited making false statements during political campaigns. *Id.* at 151–52. The Court considered the justiciability of the pre-enforcement challenge and whether it alleged a sufficiently imminent injury under Article III. It noted that pre-enforcement review is warranted when the threatened enforcement is "sufficiently imminent." *Id.* at 159. The Court further emphasized that past enforcement is indicative that the threat of enforcement is not "chimerical." *Id.* at 164 (*quoting Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

Likewise, in *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979), the Supreme Court found that the plaintiffs satisfied Article III's injury-in-fact requirement because the fear of future injury was not "imaginary or wholly speculative." There, the Court considered a pre-enforcement challenge to a statute that deemed it an unfair labor practice to encourage consumer boycotts through deceptive publicity. *Id.* at 301. Because the plaintiffs had engaged in past consumer publicity campaigns and intended to continue those campaigns in the future, the Court found their challenge to the consumer publicity provision satisfied Article III. *Id.* at 302. Similar pre-enforcement review was recognized in *Virginia v. Am. Booksellers Ass'n, Inc.*, 484

[647] [Doc. No. 214, at 20–33]

AMERICAN OVERSIGHT

U.S. 383, 386 (1988), where the Supreme Court held that booksellers could seek review of a law criminalizing the knowing display of "harmful to juveniles" material for commercial purposes, as defined by the statute. *Virginia*, 484 U.S. at 386 (*certified question answered sub nom. Commonwealth v. Am. Booksellers Ass'n, Inc.*, 236 Va. 168 (1988)).

Here, each of the Individual Plaintiffs are likely to demonstrate an injury-in-fact through a combination of past and ongoing censorship. Bhattacharya, for instance, is the apparent victim of an ongoing "campaign" of social-media censorship, which indicates that he is likely to experience future acts of censorship.[648] Similarly, Kulldorff attests to a coordinated federal censorship campaign against the Great Barrington Declaration, which implies future censorship.[649] Kulldorff's ongoing censorship experiences on his personal social-media accounts provide evidence of ongoing harm and support the expectation of imminent future harm.[650] Kheriaty also affirms ongoing and anticipated future injuries, noting that the issue of "shadow banning" his social-media posts has intensified since 2022.[651]

Hoft and Hines present similar accounts of past, ongoing, and anticipated future censorship injuries. Defendants even appear to be currently involved in an ongoing project that encourages and engages in censorship activities specifically targeting Hoft's website.[652] Hines, too, recounts past and ongoing censorship injuries, stating that her personal Facebook page, as well as the pages

---

[648] *See* [Doc. No. 214-1, ¶787 (an email from Dr. Francis Collins to Dr. Fauci and Cliff Lane which read: "Hi [Dr. Fauci] and Cliff, See https://gbdeclaration.org. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention – and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating published take down of its premises. I don't see anything like that online yet – is it underway?"), ¶¶1368–1372 (describing the covert and ongoing censorship campaign against him)]

[649] *See* [Id. at ¶¶1373–1380 (where Kulldorff explains an ongoing campaign of censorship against his personal social-media accounts, including censored tweets, censored posts criticizing mask mandates, removal of LinkedIn posts, and the ongoing permanent suspension of his LinkedIn account)]

[650] [Id.]

[651] [Id. at ¶¶1383–1386]

[652] *See* [Id. at ¶¶1387–1396 (describing the past and ongoing campaign against his website, the Gateway Pundit, which resulted in censorship on Facebook, Twitter, Instagram, and YouTube)]

AMERICAN OVERSIGHT

of Health Freedom Louisiana and Reopen Louisiana, are constantly at risk of being completely de-platformed.[653] At the time of her declaration, Hines' personal Facebook account was under an ongoing ninety-day restriction. She further asserts, and the evidence supplied in support of the preliminary injunction strongly implies, that these restrictions can be directly traced back to federal officials.

Each of the Private Plaintiffs alleges a combination of past, ongoing, and anticipated future censorship injuries. Their allegations go beyond mere complaints about past grievances. Moreover, they easily satisfy the substantial risk standard. The threat of future censorship is significant, and the history of past censorship provides strong evidence that the threat of further censorship is not illusory or speculative. Plaintiffs' request for an injunction is not solely aimed at addressing the initial imposition of the censorship penalties but rather at preventing any continued maintenance and enforcement of such penalties. Therefore, the Court concludes that the Private Plaintiffs have fulfilled the injury-in-fact requirement of Article III.

Based on the reasons outlined above, the Court determines that both the States and Private Plaintiffs have satisfied the injury-in-fact requirement of Article III.

ii. Traceability

To establish traceability, or "causation" in this context, a plaintiff must demonstrate a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). Therefore, courts examining this element of standing must assess the remoteness, if any, between the plaintiff's injury and the defendant's actions. As explained in *Ass'n of Am. Physicians & Surgeons v. Schiff*, the plaintiff must establish that it is "'substantially probable that the challenged acts of the defendant, not of some absent third party'

[653] *See* [Id. at ¶¶1397–1411]

AMERICAN OVERSIGHT

caused or will cause the injury alleged." 518 F. Supp. 3d 505, 513 (D.D.C. 2021), *aff'd sub nom. Ass'n of Am. Physicians & Surgeons, Inc. v. Schiff*, 23 F.4th 1028 (D.C. Cir. 2022) ("*AAPS II*") (quoting Fla. Audubon Soc. v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996)).

Plaintiffs argue that they are likely to prove that their injuries are fairly traceable to Defendants' actions of inducing and jointly participating in the social-media companies' viewpoint-based censorship under a theory of "but-for" causation, conspiracy, or aiding and abetting.[654] In support, they cite the above-mentioned examples of switchboarding and other pressure tactics employed by Defendants.[655] In response, Defendants assert that there is no basis upon which this Court can conclude that the social-media platforms made the disputed content-moderation decisions because of government pressure.[656] For the reasons explained below, the Court finds that Plaintiffs are likely to prove that their injuries are fairly traceable to the conduct of the Defendants.

In *Duke Power Co. v. Carolina Envt. Study Grp.*, the United States Supreme Court found that a plaintiff's injury was fairly traceable to a statute under a theory of "but-for" causation. 438 U.S. 59 (1978). The plaintiffs, who were comprised in part of individuals living near the proposed sites for nuclear plants, challenged a statute that limited the aggregate liability for a single nuclear accident under the theory that, but for the passing of the statute, the nuclear plants would not have been constructed. *Id.* at 64–65. The Supreme Court agreed with the district court's finding that

---

[654] [Doc. No. 204, at 67–68]

[655] [Id. at 69–71 (*citing* Doc. No. 214-1, ¶¶57, 64 "(promising the White House that Facebook would censor "often-true" but "sensationalized" content)"; ¶ 73 "(imposing forward limits on non-violative speech on WhatsApp)"; ¶¶ 89-92 "(assuring the White House that Facebook will use a "spectrum of levers" to censor content that "do[es] not violate our Misinformation and Harm policy, including "true but shocking claims or personal anecdotes, or discussing the choice to vaccinate in terms of personal and civil liberties")"; ¶¶ 93-100 "(agreeing to censor Tucker Carlson's content at the White House's behest, even though it did not violate platform policies)", ¶¶ 103-104 "(Twitter deplatforming Alex Berenson at White House pressure)"; ¶ 171 "(Facebook deplatformed the Disinformation Dozen immediately after these comments). Facebook officials scrambled to get back into the White House's good graces. Id. ¶¶ 172, 224 (pleading for "de-escalation" and "working together").")]

[656] [Doc. No. 266, at 131–136]

AMERICAN OVERSIGHT

there was a "substantial likelihood" that the nuclear plants would have been neither completed nor operated absent the passage of the nuclear-friendly statute. *Id.* at 75.

In *Duke Power Co.*, the defendants essentially argued that the statute was not the "but-for" cause of the injuries claimed by the plaintiffs because if Congress had not passed the statute, the Government would have developed nuclear power independently, and the plaintiffs would have likely suffered the same injuries from government-operated plants as they would have from privately operated ones. *Id.* In rejecting that argument, the Supreme Court stated:

> Whatever the ultimate accuracy of this speculation, it is not responsive to the simple proposition that private power companies now do in fact operate the nuclear-powered generating plants injuring [the plaintiffs], and that their participation would not have occurred but for the enactment and implementation of the Price-Anderson Act. Nothing in our prior cases requires a party seeking to invoke federal jurisdiction to negate the kind of speculative and hypothetical possibilities suggested in order to demonstrate the likely effectiveness of judicial relief.

Id. at 77–78. The Supreme Court's reluctancy to follow the defendants down a rabbit-hole of speculation and "what-ifs" is highly instructive.

Here, Defendants heavily rely upon the premise that social-media companies would have censored Plaintiffs and/or modified their content moderation policies even without any alleged encouragement and coercion from Defendants or other Government officials. This argument is wholly unpersuasive. Unlike previous cases that left ample room to question whether public officials' calls for censorship were fairly traceable to the Government; the instant case paints a full picture.[657] A drastic increase in censorship, deboosting, shadow-banning, and account suspensions directly coincided with Defendants' public calls for censorship and private demands for

[657] *See* [Doc. No. 204, at 41-44 (where this Court distinguished this case from cases that "left gaps" in the pleadings)]

AMERICAN OVERSIGHT

censorship.[658] Specific instances of censorship substantially likely to be the direct result of Government involvement are too numerous to fully detail, but a birds-eye view shows a clear connection between Defendants' actions and Plaintiffs injuries.

The Plaintiffs' theory of but-for causation is easy to follow and demonstrates a high likelihood of success as to establishing Article III traceability. Government officials began publicly threatening social-media companies with adverse legislation as early as 2018.[659] In the wake of COVID-19 and the 2020 election, the threats intensified and became more direct.[660] Around this same time, Defendants began having extensive contact with social-media companies via emails, phone calls, and in-person meetings.[661] This contact, paired with the public threats and tense relations between the Biden administration and social-media companies, seemingly resulted in an efficient report-and-censor relationship between Defendants and social-media companies.[662] Against this backdrop, it is insincere to describe the likelihood of proving a causal connection between Defendants' actions and Plaintiffs' injuries as too attenuated or purely hypothetical.

The evidence presented thus goes far beyond mere generalizations or conjecture: Plaintiffs have demonstrated that they are likely to prevail and establish a causal and temporal link between

---

[658] *See, e.g.*, [Doc. No. 241-1, ¶¶1, 7, 17, 164 (examples of Government officials threatening adverse legislation against social-media companies if they do not increase censorship efforts); ¶¶ 51, 119, 133, 366, 424, 519 (examples of social-media companies, typically following up after an in-person meeting or phone call, ensuring Defendants that they would increase censorship efforts)]

[659] [Doc. No. 214-1, ¶1]

[660] *See*, *e.g.*, [Id. at ¶ 156 (Psaki reinforcing President Biden's "They're killing people" comment); ¶166 (media outlets reporting tense relations between the Biden administration and social-media companies)]

[661] *See, e.g.*, [Doc. No. 174-1, at 3 (Twitter employees setting up a more streamlined process for censorship requests because the company had been "recently bombarded" with censorship requests from the White House)]

[662] *See*, *e.g.*, [Doc. Nos. 174-1, at 3 (Twitter employees setting up a more streamlined process for censorship requests because the company had been "recently bombarded" with censorship requests from the White House); at 4 (Twitter suspending a Jill Biden parody account within 45 minutes of a White House official requesting twitter to "remove this account immediately"); 214-1, at ¶799 (Drs. Bhattacharya and Kuldorff began experienced extensive censorship on social media shortly after Dr. Collins emailed Dr. Fauci seeking a "quick and devastating take down" of the GBD.); ¶1081 (Twitter removing tweets within two minutes of Scully reporting them for censorship.); ¶¶1266-1365 (Explaining how the Virality Project targeted Hines and health-freedom groups.); 214-9, at 2-3 (Twitter ensuring the White House that it would increase censorship of "misleading information" following a meeting between White House officials and Twitter employees.); etc.]

AMERICAN OVERSIGHT

Defendants' actions and the social-media companies' censorship decisions. Accordingly, this Court finds that there is a substantial likelihood that Plaintiffs would not have been the victims of viewpoint discrimination but for the coercion and significant encouragement of Defendants towards social-media companies to increase their online censorship efforts.[663]

For the reasons stated above, as well as those set forth in this Court's previous ruling on the Motion to Dismiss,[664] the Court finds that Plaintiffs are likely to succeed in establishing the traceability element of Article III standing.

iii. Redressability

The redressability element of the standing analysis requires that the alleged injury is "likely to be redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61. "To determine whether an injury is redressable, a court will consider the relationship between 'the judicial relief requested' and the 'injury' suffered." *California v. Texas*, 141 S. Ct. 2104, 2115, 210 L. Ed. 2d 230 (2021) (*quoting Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984), *abrogated by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014)). Additionally, courts typically find that where an injury is traceable to a defendant's conduct, it is usually redressable as well. *See, e.g.*, *Scenic Am., Inc. v. United States Dep't of Transportation*, 836 F.3d 42, 54 (D.C. Cir. 2016) ("[C]ausation and redressability are closely related, and can be viewed as two facets of a single requirement."); *Toll Bros. v. Twp. of Readington*, 555 F.3d 131, 142 (3d Cir. 2009) ("Redressability . . . is closely related to traceability, and the two prongs often overlap."); *El Paso Cnty. v. Trump*, 408 F. Supp. 3d 840, 852 (W.D. Tex. 2019).

---

[663] Because this Court finds that Plaintiffs have successfully shown a likelihood of success under a "but for" theory of causation, it will not address Plaintiffs arguments as to other theories of causation. However, the Court does note that caselaw from outside of the Fifth Circuit supports a more lenient theory of causation for purposes of establishing traceability. *See, e.g.*, *Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 71 (2d Cir. 2019); *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 714 (6th Cir. 2015).

[664] [Doc. No. 204, at 67–71]

AMERICAN OVERSIGHT

Plaintiffs argue that they are likely to prove that a favorable decision would redress their injuries because they have provided ample evidence that their injuries are imminent and ongoing.[665] In response, Defendants contend that any threat of future injury is merely speculative because Plaintiffs rely on dated declarations and focus on long-past conduct of Defendants and social-media companies.[666] For the reasons explained below, the Court finds that Plaintiffs are likely to prove that their injuries would be redressed by a favorable decision.

As this Court previously noted,[667] a plaintiff's standing is evaluated at the time of filing of the initial complaint in which they joined. *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004); *Davis v. F.E.C.*, 554 F.3d 724, 734 (2008); *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1153 (10th Cir. 2013). The State Plaintiffs filed suit on May 5, 2022,[668] and the individual Plaintiffs joined on August 2, 2022.[669] Both groups are likely to prove that threat of future injury is more than merely speculative.

Plaintiff States have produced sufficient evidence to demonstrate a likelihood of proving ongoing injuries as of the time the Complaint was filed. For instance, on June 13, 2023, Flaherty still wanted to "get a sense of what [Facebook was] planning" and denied the company's request for permission to stop submitting its biweekly "Covid Insights Report" to the White House.[670] Specifically, Flaherty wanted to monitor Facebook's suppression of COVID-19 misinformation "as we start to ramp up [vaccines for children under the age of five]."[671] The CDC also remained in collaboration with Facebook in June of 2022 and even delayed implementing policy changes

[665] [Doc. No. 214, at 71–74]
[666] [Doc. No. 266, at 152–157]
[667] [Doc. No. 204, at 62–65]
[668] [Doc. No. 1]
[669] [Doc. No. 45]
[670] [Doc. No. 214-1, at ¶425]
[671] [Id.]

AMERICAN OVERSIGHT

"until [it got] the final word from [the CDC]."[672] After coordinating with the CDC and White House, Facebook informed the White House of its new and government-approved policy, stating: "As of today, [June 22, 2022], all COVID-19 vaccine related misinformation and harm policies on Facebook and Instagram apply to people 6 months or older."[673]

Likewise, the individual Plaintiffs are likely to demonstrate that their injuries were imminent and ongoing as of August 2, 2022. Evidence obtained thus far indicates that Defendants have plans to continue the alleged censorship activities. For example, preliminary discovery revealed CISA's expanding efforts in combating misinformation, with a focus on the 2022 elections.[674] As of August 12, 2022, Easterly was directing the "mission of Rumor Control" for the 2022 midterm elections,[675] and CISA candidly reported to be "bee[fing] up [its] efforts to fight falsehoods[]" in preparation for the 2024 election cycle.[676] Chan of the FBI also testified at his deposition that online disinformation continues to be discussed between the federal agencies and social-media companies at the USG Industry meetings, and Chan assumes that this will continue through the 2024 election cycle.[677] All of this suggests that Plaintiffs are likely to prove that risk of future censorship injuries is more than merely speculative. Additionally, past decisions to suppress speech result in ongoing injury as long as the speech remains suppressed, and the past censorship experienced by individual Plaintiffs continues to inhibit their speech in the present. These injuries are also affecting the rights of the Plaintiffs' audience members, including those in Plaintiff States, who have the First Amendment right to receive information free from Government interference.

---

[672] [Doc. Nos. 71-7, at 6; 214-1, ¶424]
[673] [Doc. Nos. 71-7, at 6; 71-3, at 5; 214-1, ¶¶424–425]
[674] [Doc. No. 71-8, at 2; Doc. 86-7, at 14]
[675] [Doc. No. 86-7, at 14]
[676] [Doc. No. 214-1, at ¶1106 (*see also* [Doc. No. 71-8, at 2 (CISA "wants to ensure that it is set up to extract lessons learned from 2022 and apply them to the agency's work in 2024."]
[677] [Id. at ¶ 866]

AMERICAN OVERSIGHT

Accordingly, and for the reasons stated above, the Court finds that Plaintiffs are likely to prove that a favorable decision would redress their injuries because those injuries are ongoing and substantially likely to reoccur.

iv. Recent United States Supreme Court cases of *Texas* and *Haaland*

Defendants cite to two recent cases from the Supreme Court of the United States which they claim undermine this Court's previous ruling about the Plaintiff States' likelihood of proving Article III standing.

First, Defendants argue that *United States v. Texas*, No. 22-58, 2023 WL 4139000 (U.S. June 23, 2023), undermines the States' Article III standing. In *Texas*, Texas and Louisiana sued the Department of Homeland Security (the "Department"), as well as other federal agencies, claiming that the recently promulgated "Guidelines for the Enforcement of Civil Immigration Law" contravened two federal statutes. *Id.* at *2. The Supreme Court held that the states lacked Article III standing because "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." The Court further noted that the case was "categorically different" from other standing decisions "because it implicates only one discrete aspect of the executive power—namely, the Executive Branch's traditional discretion over whether to take enforcement actions against violators of federal law." *Id.* at *2, *8 (citations omitted).

Here, the Plaintiff States are not asserting a theory that the Defendants *failed* to act in conformity with the Constitution. To the contrary, the Plaintiff States assert that Defendants have affirmatively violated their First Amendment right to free speech. The Plaintiff States allege and (as extensively detailed above) are likely to prove that the Defendants caused direct injury to the Plaintiff States by significantly encouraging and/or coercing social-media companies to censor

AMERICAN OVERSIGHT

posts made on social-media. Further, as noted in this Court's previous ruling, the Plaintiff States are likely to have Article III standing because a significant portion of the Plaintiff States' population has been prevented from engaging with the posts censored by the Defendants. The Supreme Court noted that "when the Executive Branch elects not to arrest or prosecute, it does not exercise coercive power over an individual's liberty or property, and thus does not infringe upon interests that courts are often called upon to protect." *Id.* at *5. Here, federal officials allegedly did exercise coercive power, and the Plaintiffs are likely to prevail on their claim that the Defendants violated the First Amendment rights of the Plaintiff States, their citizens, and the Individual Plaintiffs.

Defendants contend that the Supreme Court in *Texas* narrowed the application of special solicitude afforded to states because the Supreme Court noted that the standing analysis in *Massachusetts* "d[id] not control" because "[t]he issue there involved a challenge to the denial of a statutorily authorized petition for rulemaking," rather than the exercise of enforcement discretion. *Id.* at *8 n.6. This Court disagrees with Defendants on that point. As noted by Plaintiffs, the majority opinion in *Texas* does not mention special solicitude. Further, this Court noted in its previous analysis of standing that the Plaintiff States could satisfy Article III's standing requirements without special solicitude. Therefore, even to the extent this Court "leaves that idea on the shelf," as suggested in Justice Gorsuch's concurrence, the Court nonetheless finds that the Plaintiff States are likely to prove Article III standing.

Defendants also argue that the Supreme Court's recent ruling in *Haaland v. Brackeen*, No. 21-376, 2023 WL 4002951 (U.S. June 15, 2023), undermines the Plaintiff States' Article III standing. In *Haaland*, the Supreme Court ruled that Texas did not possess standing to challenge the placement provisions of the Indian Child Welfare Act, which prioritizes Indian families in

AMERICAN OVERSIGHT

custody disputes involving Indian children. *Id.* at *19. The Supreme Court reasoned that the states in *Texas* could not "assert equal protection claims on behalf of its citizens because '[a] State does not have standing as *parens patriae* to bring an action against the Federal Government.'" *Id.* (*quoting Snapp*, 458 U.S. at 610 n.16)). The Defendants argue that this statement precludes *parens patriae* standing in the present case.[678] However, in its brief discussion regarding *parens patriae* standing, the *Haaland* Court quoted footnote 16 from *Snapp*, which, in turn, reiterated the "Mellon bar." *Haaland*, 2023 WL 4002951, at *19; *Snapp*, 458 U.S. at 610 n.16 (*quoting Massachusetts v.* 262 U.S. at 485–86.

Plaintiffs correctly note that, although both cases employ broad language, neither *Haaland* nor *Snapp* elaborate on the extent of the "Mellon bar." Moreover, the Supreme Court has clarified in other instances that *parens patriae* suits are permitted against the federal government outside the scope of the Mellon bar. *See Massachusetts v. EPA*, 549 U.S. at 520 n.17, (explaining the "critical difference" between barred *parens patriae* suits by Mellon and allowed *parens patriae* suits against the federal government).

Consistent with *Massachusetts v. EPA*, this Court has previously determined that the Mellon bar applies to "third-party *parens patriae* suits," but not to "quasi-sovereign-interest suits."[679] In *Haaland*, Texas presented a "third-party parens patriae suit," as opposed to a "quasi-sovereign-interest suit," as it asserted the equal protection rights of only a small minority of its population (i.e., non-Indian foster or adoptive parents seeking to foster or adopt Indian children against the objections of relevant Indian tribes), which clearly did not qualify as a quasi-sovereign interest. *See Haaland*, 2023 WL 4002951, at *19 & n.11). Here, however, Louisiana and Missouri advocate for the rights of a significant portion of their populations, specifically the hundreds of

[678] [Doc. 289, at 2].
[679] [Doc. 224, at 215–26], *quoting Kentucky v. Biden*, 23 F.4th 585, 598 (6th Cir. 2022).

AMERICAN OVERSIGHT

thousands or millions of citizens who are potential audience members affected by federal social-media speech suppression.

Furthermore, when the *Haaland* Court determined that Texas lacked third-party standing, it stressed that Texas did not have either a "'concrete injury' to the State" or any hindrance to the third party's ability to protect its own interests. *Id.* at *19 n.11 (*quoting Georgia v. McCollum*, 505 U.S. 42, 55–56 (1992)). Here, by contrast, the Plaintiff States have demonstrated a likelihood of succeeding on their claims that they have suffered, and likely will continue to suffer, numerous concrete injuries resulting from federal social-media censorship.[680] Additionally, the ability of the third parties in this case to protect their own interests is hindered because the diffuse First Amendment injury experienced by each individual audience member in Louisiana and Missouri lacks sufficient economic impact to encourage litigation through numerous individual lawsuits. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963).

Defendants further contend that *Haaland* rejected Texas's argument regarding the ICWA's placement provisions requiring Texas to compromise its commitment to being impartial in child-custody proceedings.[681] However, the Supreme Court rejected this argument for a specific reason: "Were it otherwise, a State would always have standing to bring constitutional challenges when it is complicit in enforcing federal law." *Haaland*, 2023 WL 4002951, at *19. By contrast, Missouri and Louisiana do not assert that the federal government mandates their complicity in enforcing federal social-media-censorship regimes. The Plaintiff States instead assert that they, along with a substantial portion of their populations, have been injured by Defendants' actions.

Neither *Texas* nor *Haaland* undermine this Court's previous ruling that the Plaintiff States have Article III standing to sue Defendants in the instant case. Further, the evidence produced thus

[680] *See, e.g.*, [Doc. 214-1, ¶¶ 1427–1442]
[681] [Doc. 289, at 3] *quoting Haaland*, 2023 WL 4002951, at *19.

AMERICAN OVERSIGHT

far through limited discovery demonstrates that Plaintiffs are likely to succeed on their First Amendment claims. Accordingly, the Court finds that Plaintiffs are likely to prove all elements of Article III standing, and therefore, are likely to establish that this Court has jurisdiction.

2. Irreparable Harm

The second requirement for a Preliminary Injunction is a showing of irreparable injury: plaintiffs must demonstrate "a substantial threat of irreparable injury" if the injunction is not issued. *Texas*, 809 F.3d at 150. For injury to be "irreparable," plaintiffs need only show it cannot be undone through monetary remedies. *Burgess v. Fed. Deposit Inc., Corp.*, 871 F.3d 297, 304 (5th Cir. 2017). Deprivation of a procedural right to protect a party's concrete interests is irreparable injury. *Texas*, 933 F.3d at 447. Additionally, violation of a First Amendment constitutional right, even for a short period of time, is always irreparable injury. *Elrod*, 427 U.S. at 373.

Plaintiffs argue in their memorandum that the First Amendment violations are continuing and/or that there is a substantial risk that future harm is likely to occur. In contrast, Defendants argue that Plaintiffs are unable to show imminent irreparable harm because the alleged conduct occurred in the past, is not presently occurring, and is unlikely to occur in the future. Defendants argue Plaintiffs rely upon actions that occurred approximately one year ago and that it cannot be remedied by any prospective injunctive relief. Further, Defendants argue that there is no "imminent harm" because the COVID-19 pandemic is over and because the elections where the alleged conduct occurred are also over.

The Court finds that Plaintiffs have demonstrated a "significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm." *Humana, Inc., v. Jackson*, 804 F.2d 1390, 1394 (5th Cir. 1986). To demonstrate irreparable

AMERICAN OVERSIGHT

harm at the preliminary injunction stage, Plaintiffs must adduce evidence showing that the irreparable injury is likely to occur during the pendency of the litigation. *Justin Indus. Inc.*, v. *Choctaw Secs., L.P.*, 920 F.2d 262, 268 n. 7 (5th Cir. 1990). This Plaintiffs have done.

Defendants argue that the alleged suppression of social-media content occurred in response to the COVID-19 pandemic and attacks on election infrastructure, and therefore, the alleged conduct is no longer occurring. Defendants point out that the alleged conduct occurred between one to three years ago. However, the information submitted by Plaintiffs was at least partially based on preliminary injunction-related discovery[682] and third-party subpoena requests that were submitted to five social-media platforms on or about July 19, 2022.[683] The original Complaint[684] was filed on May 5, 2022, and most of the responses to preliminary injunction-related discovery provided answers to discovery requests that occurred before the Complaint was filed. Since completion of preliminary-injunction related discovery took over six months, most, if not all, of the information obtained would be at least one year old.

Further, the Defendants' decision to stop some of the alleged conduct does not make it any less relevant. A defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur. *Already, LLC v. Nike*, 568 U.S. 85, 91 (2013). Defendants have not yet met this burden here.

Defendants also argue that, due to the delay in the Plaintiffs seeking relief,[685] the Plaintiffs have not shown "due diligence" in seeking relief. However, this Court finds that Plaintiffs have exercised due diligence. This is a complicated case that required a great deal of discovery in order

[682] [Doc. No. 34]
[683] [Doc. No. 37]
[684] [Doc. No. 1]
[685] Plaintiffs allege actions occurring as far back as 2020.

AMERICAN OVERSIGHT

to obtain the necessary evidence to pursue this case. Although it has taken several months to obtain this evidence, it certainly was not the fault of the Plaintiffs. Most of the information Plaintiffs needed was unobtainable except through discovery.

Defendants further argue the risk that Plaintiffs will sustain injuries in the future is speculative and depends upon the action of the social-media platforms. Defendants allege the Plaintiffs have therefore not shown imminent harm by any of the Defendants.

In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("*SBA List*"), the Supreme Court held that, for purposes of an Article III injury-in-fact, an allegation of future injury may suffice if there is "a 'substantial risk' that the harm will occur." (*quoting Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, (2013)). In *SBA List*, a petitioner challenged a statute that prohibited making certain false statements during the course of a political campaign. *Id.* at 151–52. In deciding whether the pre-enforcement challenge was justiciable—and in particular, whether it alleged a sufficiently imminent injury for purposes of Article III—the Court noted that pre-enforcement review is warranted under circumstances that render the threatened enforcement "sufficiently imminent." *Id.* at 159. Specifically, the Court noted that past enforcement is "good evidence that the threat of enforcement is not 'chimerical.'" *Id.* at 164 (*quoting Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

Similarly, in *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979), the Supreme Court held that a complaint alleges an Article III injury-in-fact where fear of future injury is not "imaginary or wholly speculative." In *Babbitt*, the Supreme Court considered a pre-enforcement challenge to a statute that made it an unfair labor practice to encourage consumers to boycott using "dishonest, untruthful, and deceptive publicity." *Id.* at 301. Because the plaintiffs had engaged in consumer publicity campaigns in the past and alleged an intention to continue those

AMERICAN OVERSIGHT

campaigns in the future, the Court held that their challenge to the consumer publicity provision presented an Article III case or controversy. *Id.* at 302; *see also Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 386 (1988) (where the Supreme Court held that booksellers could seek pre-enforcement review of a law making it a crime to "knowingly display for commercial purpose" material that is "harmful to juveniles," as defined by the statute).

Therefore, the question is whether Plaintiffs have alleged a "substantial risk" that harm may occur, which is not "imaginary or wholly speculative." This Court finds that the alleged past actions of Defendants show a substantial risk of harm that is not imaginary or speculative. *SBA List*, 573 U. S. at 164. Defendants apparently continue to have meetings with social-media companies and other contacts.[686]

Although the COVID-19 pandemic is no longer an emergency, it is not imaginary or speculative to believe that in the event of any other real or perceived emergency event, the Defendants would once again use their power over social-media companies to suppress alternative views. And it is certainly not imaginary or speculative to predict that Defendants could use their power over millions of people to suppress alternative views or moderate content they do not agree with in the upcoming 2024 national election. At oral arguments Defendants were not able to state that the "switchboarding" and other election activities of the CISA Defendants and the State Department Defendants would not resume prior to the upcoming 2024 election;[687] in fact, Chan testified post 2020, "we've never stopped."[688] Notably, a draft copy of the DHS's "Quadrennial Homeland Security Review," which outlines the department's strategy and priorities in upcoming years, states that the department plans to target "inaccurate information" on a wide range of topics,

[686] [Doc. No. 204-1 at 40]
[687] [Doc. No. 208 at 122]
[688] [Chan depo. at 8–9]

AMERICAN OVERSIGHT

including the origins of the COVID-19 pandemic, the efficacy of COVID-19 vaccines, racial justice, the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine.[689]

The Plaintiffs are likely to succeed on the merits in their claims that there is a substantial risk that harm will occur, that is not imaginary or speculative. Plaintiffs have shown that not only have the Defendants shown willingness to coerce and/or to give significant encouragement to social-media platforms to suppress free speech with regard to the COVID-19 pandemic and national elections, they have also shown a willingness to do it with regard to other issues, such as gas prices,[690] parody speech,[691] calling the President a liar,[692] climate change,[693] gender,[694] and abortion.[695] On June 14, 2022, White House National Climate Advisor Gina McCarthy, at an Axios event entitled, "A Conversation on Battling Disinformation," was quoted as saying, "We have to get together; we have to get better at communicating, and frankly, the tech companies have to stop allowing specific individuals over and over to spread disinformation."[696]

The Complaint (and its amendments) shows numerous allegations of apparent future harm. Plaintiff Bhattacharya alleges ongoing social-media censorship.[697] Plaintiff Kulldorff alleges an ongoing campaign of censorship against the GBD and his personal social-media accounts.[698] Plaintiff Kheriaty also alleges ongoing and expected future censorship,[699] noting "shadow-banning" his social-media account is increasing and has intensified since 2022.[700] Plaintiffs Hoft

[689] [Doc. No. 209-23 at 4]
[690] [Doc. No. 212-3 at 65–66, ¶ 211]
[691] [Id. at 58-60, ¶¶ 180–188]
[692] [Id. at 61, ¶ 190]
[693] [Id. at 63-64, ¶¶ 200–203]
[694] [Id. at 64-64, ¶¶ 204–208]
[695] [Id. at 65, ¶¶ 209–210]
[696] [Doc. No. 214-15]
[697] [Doc. No. 45-3, ¶¶ 15–33]
[698] [Doc. No. 45-4, ¶¶ 14–16]
[699] [Doc. No. 45-7, ¶¶ 12–18]
[700] [Id. at ¶¶ 15]

AMERICAN OVERSIGHT

and Hines also allege ongoing and expected future censorship injuries.[701] It is not imaginary or speculative that the Defendants will continue to use this power. It is likely.

The Court finds that Plaintiffs are likely to succeed on their claim that they have shown irreparable injury sufficient to satisfy the standard for the issuance of a preliminary injunction.

3. Equitable Factors and Public Interest

Thus far, Plaintiffs have satisfied the first two elements to obtain a preliminary injunction. The final two elements they must satisfy are that the threatened harm outweighs any harm that may result to the Federal Defendants and that the injunction will not undermine the public interest. *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997). These two factors overlap considerably. *Texas*, 809 F.3d at 187. In weighing equities, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The public interest factor requires the court to consider what public interests may be served by granting or denying a preliminary injunction. *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 997–98 (8th Cir. 2011).

Defendants maintain their interest in being able to report misinformation and warn social-media companies of foreign actors' misinformation campaigns outweighs the Plaintiffs' interest in the right of free speech. This Court disagrees and finds the balance of equities and the public interest strongly favors the issuance of a preliminary injunction. The public interest is served by maintaining the constitutional structure and the First Amendment free speech rights of the Plaintiffs. The right of free speech is a fundamental constitutional right that is vital to the freedom of our nation, and Plaintiffs have produced evidence of a massive effort by Defendants, from the

[701] [Doc. No. 45-7 at ¶¶ 12–18]; [Doc. No. 84 at ¶¶ 401–420]; [Doc. No. 45-12 at ¶ 4, 12]

AMERICAN OVERSIGHT

White House to federal agencies, to suppress speech based on its content. Defendants' alleged suppression has potentially resulted in millions of free speech violations. Plaintiffs' free speech rights thus far outweighs the rights of Defendants, and thus, Plaintiffs satisfy the final elements needed to show entitlement to a preliminary injunction.

4. Injunction Specificity

Lastly, Defendants argue that Plaintiff's proposed preliminary injunction lacks the specificity required by Federal Rule of Civil Procedure 65 and is impermissibly overbroad. Rule 65(d)(1) requires an injunction to "state its terms specifically" and to "describe in reasonable detail the acts or acts restrained or required." The specificity provisions of Rule 65(d) are designed to prevent uncertainty and confusion on the part of those faced with injunction orders and to avoid possible contempt based upon a decree too vague to be understood. *Atiyeh v. Capps*, 449 U.S. 1312, 1316–17 (1981). An injunction must be narrowly tailored to remedy the specific action that gives rise to the injunction. *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016).

This Court believes that an injunction can be narrowly tailored to only affect prohibited activities, while not prohibiting government speech or agency functions. Just because the injunction may be difficult to tailor is not an excuse to allow potential First Amendment violations to continue. Thus, the Court is not persuaded by Defendants arguments here.

Because Plaintiffs have met all the elements necessary to show entitlement to a preliminary injunction, this Court shall issue such injunction against the Defendants described above.

IV. CLASS CERTIFICATION

In their Third Amended Complaint, the Individual Plaintiffs purport to bring a class action "on behalf of themselves and two classes of other persons similarly situated to them."[702] Plaintiffs

[702] [Doc. No. 268 at ¶489].

AMERICAN OVERSIGHT

go on to describe the two proposed classes, as well as state generally that each requirement for class certification is met.[703] Defendants opposed Plaintiffs' request for class certification in their Response to Plaintiffs' Motion for Class Certification and for Leave to File Third Amended Complaint.[704]

The Court is obligated to analyze whether this litigation should proceed as a class action. *See Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996) ("A district court must conduct a rigorous analysis of the rule 23 prerequisites before certifying a class."). Pursuant to this obligation, the Court questioned counsel at the hearing on the preliminary injunction as to the basis for class certification. As explained in further detail below, the Court finds that Plaintiffs failed to meet their burden of proof, and class certification is improper here.

A. Class Certification Standard under FRCP 23

"The decision to certify is within the broad discretion of the court, but that discretion must be exercised within the framework of rule 23." *Id.* at 740. "The party seeking certification bears the burden of proof." *Id.*

Federal Rule of Civil Procedure 23(a) lays out the four key prerequisites for a class action. It states:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

---

[703] [Id. at ¶¶490–501].
[704] [Doc. No. 244].

AMERICAN OVERSIGHT

In addition to the enumerated requirements above, Plaintiffs must propose a class that has an objective and precise definition. "The existence of an ascertainable class of persons to be represented by the proposed class representative is an implied prerequisite of Federal Rule of Civil Procedure 23." *John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007).

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Here, Plaintiffs specifically bring this class action under Rule 23(b)(2), which allows for maintenance of a class action where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b0) (2). "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) class actions. *Amchem Prod., Inc.*, 521 U.S. at 614.

Notably, the Fifth Circuit recently held that a standing analysis is necessary before engaging in the class certification analysis. *Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727, 733 (5th Cir. 2023). However, because this Court has already completed multiple standing analyses in this matter, and because the Court ultimately finds that the class should not be certified, the Court will not address which standing test should be applied to this specific issue.

B. Analysis

In order to certify this matter as a class action, the Court must find that Plaintiffs have established each element of Rule 23(a). *See In re Monumental Life Ins. Co.*, 365 F.3d 408, 414–15 (5th Cir. 2004) ("All classes must satisfy the four baseline requirements of rule 23(a):

AMERICAN OVERSIGHT

numerosity, commonality, typicality, and adequacy of representation."). The Court finds that Plaintiffs failed to meet their burden, and therefore, the Court will not certify the class action.

1. Class Definition

Plaintiffs propose two classes to proceed with their litigation as a class action. First, Plaintiffs define Class 1 as follows:

> The class of social-media users who have engaged or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing strike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the platform after Defendants and/or those acting in concert with them flag or flagged the speech to the platform(s) for suppression.[705]

Next, Plaintiffs define Class 2 as follows:

> The class of social-media users who have engaged in or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged in or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing strike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the company pursuant to any change to the company's policies or enforcement practices that Defendants and/or those acting in concert with them have induced or will induce the company to make.[706]

"It is elementary that in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable." *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). The Court finds that the class definitions provided by Plaintiffs are neither "adequately defined" nor "clearly ascertainable." Simply put, there is no way to tell just how many

[705] [Doc. No. 268 at ¶490]
[706] [Id. at ¶491]

AMERICAN OVERSIGHT

people or what type of person would fit into these proposed classes. The proposed class definitions are so broad that almost every person in America, and perhaps in many other countries as well, could fit into the classes. The Court agrees with Defendants that the language used is simply too vague to maintain a class action using these definitions.[707] Where a class definition is, as here, "too broad and ill-defined" to be practicable, the class should not be certified. *See Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, No. 22-10145, 2023 WL 4073826, at *14 (5th Cir. June 20, 2023).

Further, no evidence was produced at the hearing on the motion for preliminary injunction that "would have assisted the district court in more accurately delineating membership in a workable class." *DeBremaecker*, 433 F.2d at 734. The Court questioned Plaintiffs' counsel about the issues with the proposed class definitions, but counsel was unable to provide a solution that would make class certification feasible here. Counsel for Plaintiffs stated that "the class definition is sufficiently precise," but the Court fails to see how that is so, and counsel did not explain any further.[708] Counsel for Plaintiffs focused on the fact that the proposed class action falls under Rule 23(b)(2), providing for broad injunctive relief, and therefore, counsel argued that the Court would not need to "figure out every human being in the United States of American [sic] who was actually adversely affected."[709] Even if the Court does not need to identify every potential class member individually, the Court still needs to be able to state the practical bounds of the class definition — something it cannot do with the loose wording given by Plaintiffs.

[707] [Doc. No. 244 at 7]
[708] Hearing Transcript at 181, line 15.
[709] [Id. at lines 16–18]

AMERICAN OVERSIGHT

Without a feasible class definition, the Court cannot certify Plaintiffs' proposed class action. Out of an abundance of caution, however, the Court will address the other enumerated prerequisites of Rule 23(a) below.

2. Numerosity

The numerosity requirement mandates that a class be "so large that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Although the number of members in a proposed class is not determinative of whether joinder is impracticable," classes with a significantly high number of potential members easily satisfy this requirement. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (finding class of 100 to 150 members satisfied the numerosity requirement). Other factors, such as "the geographical dispersion of the class" and "the nature of the action," may also support a finding that the numerosity element has been met. *Id.* at 624–25.

Here, Plaintiffs state that both Class 1 and Class 2 are "sufficiently numerous that joinder of all members is impracticable."[710] Plaintiffs reference the "content of hundreds of users with, collectively, hundreds of thousands or millions of followers" who were affected by Defendants' alleged censorship.[711] Thus, based on a surface-level look at potential class members, it appears that the numerosity requirement would be satisfied because the class members' numbers reach at least into the thousands, if not the millions.

However, the numerosity requirement merely serves to highlight the same issue described above: the potential class is simply too broad to even begin to fathom who would fit into the class. Joinder of all the potential class members is more than impractical—it is impossible. Thus, while the sheer number of potential class members may tend towards class certification, the Court is only

[710] [Doc. No. 268 at ¶¶492–93]
[711] [Id. at ¶¶492]

AMERICAN OVERSIGHT

further convinced by Plaintiffs' inability to estimate the vast number of class members that certification is improper here.

3. Commonality

The commonality requirement ensures that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The test for commonality is not demanding and is met 'where there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.'" *Mullen*, 186 F.3d at 625 (*quoting Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)).

Here, Plaintiffs state that both classes share common questions of law or fact, including "the question whether the government is responsible for a social-media company's suppression of content that the government flags to the company for suppression" for Class 1 and "the question whether the government is responsible for a social-media company's suppression of content pursuant to a policy or enforcement practice that the government induced the company to adopt or enforce" for Class 2.[712] These questions of law are broadly worded and may not properly characterize the specific issues being argued in this case.

At the hearing for the preliminary injunction, Plaintiffs' counsel clarified that the alleged campaign of censorship "involve[es] a whole host of common questions whose resolution are going to determine whether or not there's a First Amendment violation."[713] The Court agrees that there is certainly a common question of First Amendment law that impacts each member of the proposed classes, but notes Defendants' well-reasoned argument that Plaintiffs may be attempting to aggregate too many questions into one class action.[714] The difficulty of providing "a single,

[712] [Id. at ¶¶494–95]
[713] Hearing Transcript, at 183, lines 19–21.
[714] [Doc. No. 244 at 10]

AMERICAN OVERSIGHT

class-wide answer," as highlighted by Defendants, further proves to this Court that class certification is likely not the best way to proceed with this litigation.[715] Although commonality is a fairly low bar, the Court is not convinced Plaintiffs have met their burden on this element of Rule 23(a).

4. Typicality

The typicality requirement mandates that named parties' claims or defenses "are typical…of the class." Fed. R. Civ. P. 23(a)(3). "Like commonality, the test for typicality is not demanding." *Mullen*, 186 F.3d at 625. It "focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Lightbourn*, 118 F.3d at 426.

Here, Plaintiffs assert that the Individual Plaintiffs' claims are typical of both Class 1 and Class 2 members' claims because they "all arise from the same course of conduct by Defendants…namely, the theory that such conduct violates the First Amendment."[716] Further, Plaintiffs state that the Individual Plaintiffs "are not subject to any affirmative defenses that are inapplicable to the rest of the class and likely to become a major focus of the case."[717]

While the general claims of each potential class member would arise from the Defendants' alleged First Amendment violations, the Individual Plaintiffs have not explained how their claims are typical of each proposed class specifically. For example, Class 2 includes those social-media users who "follow, subscribe to, are friends with, or are otherwise connected to the accounts of users" subject to censorship.[718] While the Individual Plaintiffs detail at length their own censorship, they do not clarify how they have been harmed by the censorship of other users. Again,

[715] [Id. at 13]
[716] [Doc. No. 268 at ¶496–97]
[717] [Id.]
[718] [Id. at ¶491]

AMERICAN OVERSIGHT

this confusion highlights the myriad issues with this proposed class action as a result of the ill-defined and over-broad class definitions. The Court cannot make a finding that the Individual Plaintiffs' claims are typical of all class members' claims, simply because the Court cannot identify who would fit in the proposed class. Merely stating that the Rule 23(a) requirements have been met is not enough to persuade this Court that the class should be certified as stated.

5. Adequate Representation

The final element of a class certification analysis requires that the class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Differences between named plaintiffs and class members render the named plaintiffs' inadequate representatives only if those differences create conflicts between the named plaintiffs' interests and the class members' interests." *Mullen*, 186 F.3d at 626.

On this element, Plaintiffs state that they "are willing and able to take an active role in the case, control the course of litigation, and protect the interest of absentees in both classes."[719] Plaintiff also state that "[n]o conflicts of interest currently exist or are likely to develop" between themselves and the absentees.[720] This element is likely met, without evidence to the contrary.

However, without a working class definition, and with the issues concerning the other Rule 23(a) elements discussed above, the Court finds class certification inappropriate here, regardless of the adequacy of the Individual Plaintiffs' representation. Thus, for the foregoing reasons, the Court declines to certify this matter as a class action.

V. CONCLUSION

> Once a government is committed to the principle of silencing the voice of opposition, it has only one place to go, and that is down the path of increasingly repressive measures, until it becomes a source

[719] [Id. at ¶498]
[720] [Id.]

AMERICAN OVERSIGHT

> of terror to all its citizens and creates a country where everyone lives in fear.
>
> Harry S. Truman

The Plaintiffs are likely to succeed on the merits in establishing that the Government has used its power to silence the opposition. Opposition to COVID-19 vaccines; opposition to COVID-19 masking and lockdowns; opposition to the lab-leak theory of COVID-19; opposition to the validity of the 2020 election; opposition to President Biden's policies; statements that the Hunter Biden laptop story was true; and opposition to policies of the government officials in power. All were suppressed. It is quite telling that each example or category of suppressed speech was conservative in nature. This targeted suppression of conservative ideas is a perfect example of viewpoint discrimination of political speech. American citizens have the right to engage in free debate about the significant issues affecting the country.

Although this case is still relatively young, and at this stage the Court is only examining it in terms of Plaintiffs' likelihood of success on the merits, the evidence produced thus far depicts an almost dystopian scenario. During the COVID-19 pandemic, a period perhaps best characterized by widespread doubt and uncertainty, the United States Government seems to have assumed a role similar to an Orwellian "Ministry of Truth."[721]

The Plaintiffs have presented substantial evidence in support of their claims that they were the victims of a far-reaching and widespread censorship campaign. This court finds that they are likely to succeed on the merits of their First Amendment free speech claim against the Defendants. Therefore, a preliminary injunction should issue immediately against the Defendants as set out

[721] An "Orwellian 'Ministry of Truth'" refers to the concept presented in George Orwell's dystopian novel, '1984.' In the novel, the Ministry of Truth is a governmental institution responsible for altering historical records and disseminating propaganda to manipulate and control public perception.

AMERICAN OVERSIGHT

herein. The Plaintiffs Motion for Preliminary Injunction [Doc. No. 10] is **GRANTED IN PART and DENIED IN PART**.

The Plaintiffs' request to certify this matter as a class action pursuant to Fed. R. Civ. P. Article 23(b)(2) is **DENIED.**

MONROE, LOUISIANA this 4th day of July 2023.

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI, ET AL.	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R BIDEN JR., ET AL.	**MAG. JUDGE KAYLA D. MCCLUSKY**

JUDGMENT

For the reasons set forth in the Memorandum Ruling on the Request for Preliminary Injunction,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Preliminary Injunction [Doc. No. 10] is **GRANTED in part and DENIED in part**.

IT IS FURTHER ORDERED that: the **DEPARTMENT OF HEALTH AND HUMAN SERVICES** ("HHS") and **THE NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES** ("NIAID"), and specifically the following employees of the HHS and NIAID: **XAVIER BECERRA,**[1] Secretary of HHS; **DR. HUGH AUCHINCLOSS**, Director of NIAID; **YOLANDA BYRD**, HHS Digital Engagement Team; **CHRISTY CHOI**, HHS Office of Communications; **ASHLEY MORSE**, HHS Director of Digital Engagement; **JOSHUA PECK**, HHS Deputy Assistant Secretary, Deputy Digital Director of HHS successor (formerly **JANELL MUHAMMED**); along with their secretaries, directors, administrators and employees; **SURGEON GENERAL VIVEK H. MURTHY**, **KATHARINE DEALY**, Chief Engagement Officer for the Surgeon General, along with her secretaries, directors, administrators, and employees; the **CENTERS FOR DISEASE CONTROL AND PREVENTION** ("CDC"), and specifically the following employees: **CAROL Y. CRAWFORD**, Chief of the Digital Media

[1] All individuals named in this Judgment are being sued in their official capacities.

AMERICAN OVERSIGHT

Branch of the CDC Division of Public Affairs; **JAY DEMPSEY**, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; **KATE GALATAS**, CDC Deputy Communications Director; **UNITED STATES CENSUS BUREAU** ("Census Bureau"), and specifically the following employees: **JENNIFER SHOPKORN**, Census Bureau Senior Advisor for Communications, Division Chief for the Communications Directorate, and Deputy Director of the Census Bureau Office of Faith Based and Neighborhood Partnerships**,** along with their secretaries, directors, administrators and employees; the **FEDERAL BUREAU OF INVESTIGATION** ("FBI"), and specifically the following employees: **LAURA DEHMLOW**, Section Chief, FBI Foreign Influence Task Force; **ELVIS M. CHAN**, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division; **THE UNITED STATES DEPARTMENT OF JUSTICE**, along with their secretary, director, administrators, and employees; the following members of the Executive Office of the President of the United States: White House Press Secretary **KARINE JEAN-PIERRE**, Counsel to the President; **STUART F. DELERY**, White House Partnerships Manager; **AISHA SHAH**, Special Assistant to the President; **SARAH BERAN**, **MINA HSIANG**, Administrator of the United States Digital Service within the Office of Management and Budget; **ALI ZAIDI**, White House National Climate Advisor; White House Senior COVID-19 Advisor successor (formerly **ANDREW SLAVITT**); Deputy Assistant to the President and Director of Digital Strategy successor (formerly **ROB FLAHERTY**); **DORI SALCIDO**, White House COVID-19 Director of Strategic Communications and Engagement; White House Digital Director for the COVID-19 Response Team successor (formerly **CLARKE HUMPHREY**); Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team successor (formerly **BENJAMIN WAKANA**); Deputy Director for Strategic Communications and External Engagement for the White House COVID-

AMERICAN OVERSIGHT

19 Response Team successor (formerly **SUBHAN CHEEMA**); White House COVID-19 Supply Coordinator successor (formerly **TIMOTHY W. MANNING**); Chief Medical Advisor to the President, **DR. HUGH AUCHINCLOSS**, along with their directors, administrators and employees; the **CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY** ("**CISA**"), and specifically the following employees: **JEN EASTERLY**, Director of CISA; **KIM WYMAN**, Senior Cybersecurity Advisor and Senior Election Security Leader; **LAUREN PROTENTIS**; **GEOFFREY HALE**; **ALLISON SNELL**; **BRIAN SCULLY**, Officials of CISA; the **UNITED STATES DEPARTMENT OF HOMELAND SECURITY** ("DHS"), and specifically the following employees: **ALEJANDRO MAYORKAS**, Secretary of DHS; **ROBERT SILVERS**, Under-Secretary of the Office of Strategy, Policy and Plans; **SAMANTHA VINOGRAD**, Senior Counselor for National Security in the Official of the Secretary for DHS, along with their secretary, directors, administrators, and employees; the **UNITED STATES DEPARTMENT OF STATE** ("State Department"), and specifically the following employees: **LEAH BRAY**, Acting Coordinator of the State Department's Global Engagement Center ("GEC"); **ALEX FRISBIE**, State Department Senior Technical Advisor and member of the Technology Engagement Team at the GEC; **DANIEL KIMMAGE**, Acting Coordinator of the GEC, along with their secretary, directors, administrators, and employees **ARE HEREBY ENJOINED AND RESTRAINED** from taking the following actions as to social-media companies:[2]

[2] "Social-media companies" include Facebook/Meta, Twitter, YouTube/Google, WhatsApp, Instagram, WeChat, TikTok, Sina Weibo, QQ, Telegram, Snapchat, Kuaishou, Qzone, Pinterest, Reddit, LinkedIn, Quora, Discord, Twitch, Tumblr, Mastodon, and like companies.

AMERICAN OVERSIGHT

(1) meeting with social-media companies for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms;[3]

(2) specifically flagging content or posts on social-media platforms and/or forwarding such to social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;

(3) urging, encouraging, pressuring, or inducing in any manner social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected free speech;

(4) emailing, calling, sending letters, texting, or engaging in any communication of any kind with social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;

(5) collaborating, coordinating, partnering, switchboarding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the Stanford Internet Observatory, or any like project or group for the purpose of urging, encouraging, pressuring, or inducing in any manner removal, deletion, suppression, or reduction of content posted with social-media companies containing protected free speech;

(6) threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech;

[3] "Protected free speech" means speech that is protected by the Free Speech Clause of the First Amendment to the United States Constitution in accordance with jurisprudence of the United States Supreme Court, Courts of Appeal and District Courts.

AMERICAN OVERSIGHT

(7) taking any action such as urging, encouraging, pressuring, or inducing in any manner social-media companies to remove, delete, suppress, or reduce posted content protected by the Free Speech Clause of the First Amendment to the United States Constitution;

(8) following up with social-media companies to determine whether the social-media companies removed, deleted, suppressed, or reduced previous social-media postings containing protected free speech;

(9) requesting content reports from social-media companies detailing actions taken to remove, delete, suppress, or reduce content containing protected free speech; and

(10) notifying social-media companies to Be on The Lookout ("BOLO") for postings containing protected free speech.

This Preliminary Injunction precludes said named Defendants, their agents, officers, employees, contractors, and all acting in concert with them from the aforementioned conduct. This Preliminary Injunction also precludes said named Defendants, their agents, officers, employees, and contractors from acting in concert with others who are engaged in said conduct.

IT IS FURTHER ORDERED that the following actions are **NOT** prohibited by this Preliminary Injunction:

(1) informing social-media companies of postings involving criminal activity or criminal conspiracies;

(2) contacting and/or notifying social-media companies of national security threats, extortion, or other threats posted on its platform;

(3) contacting and/or notifying social-media companies about criminal efforts to suppress voting, to provide illegal campaign contributions, of cyber-attacks against election infrastructure, or foreign attempts to influence elections;

AMERICAN OVERSIGHT

(4) informing social-media companies of threats that threaten the public safety or security of the United States;

(5) exercising permissible public government speech promoting government policies or views on matters of public concern;

(6) informing social-media companies of postings intending to mislead voters about voting requirements and procedures;

(7) informing or communicating with social-media companies in an effort to detect, prevent, or mitigate malicious cyber activity;

(8) communicating with social-media companies about deleting, removing, suppressing, or reducing posts on social-media platforms that are not protected free speech by the Free Speech Clause in the First Amendment to the United States Constitution.

IT IS FURTHER ORDERED that no security is required to be posted by Plaintiffs under Federal Rule of Civil Procedure 65.

IT IS FURTHER ORDERED that this Preliminary Injunction Order shall remain in effect pending the final resolution of this case or until further orders issue from this Court, the United States Court of Appeals for the Fifth Circuit, or the Supreme Court of the United States.

IT IS FURTHER ORDERD that the Motion for Preliminary Injunction [Doc. No. 10] is **DENIED** as to the following Defendants: U.S. Food and Drug Administration; U. S. Department of Treasury; U.S. Election Assistance Commission; U. S. Department of Commerce and employees Erica Jefferson, Michael Murray, Wally Adeyemo, Steven Frid, Brad Kimberly, and Kristen Muthig; and Disinformation Governance Board ("DGB") and its Director Nina Jankowicz.

IT IS FURTHER ORDERED that no evidentiary hearing is required at this time.

AMERICAN OVERSIGHT

IT IS FURTHER ORDERED that Plaintiffs' request for certification of this proceeding as a class action pursuant to Fed. R. Civ. P. Article 23 (b)(2) is **DENIED.**

THUS, DONE AND SIGNED IN MONROE, LOUISIANA, this 4th day of July 2023**.**

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

AMERICAN OVERSIGHT

Messages Issue Analysis from 9/28/2023 to 10/5/2023

Issue Code	Translation	Count	Pct
LEGAL ASSISTANCE	Legal Assistance	49	20.9%
CONSUMER COMPLAINT	Consumer Complaint	33	14.0%
CORR-COMPL-INQUIRY	General Correspondence/Complaint/Inquiry	24	10.2%
LE COMPLAINT	Law Enforcement Complaint	11	4.7%
COMPLAINT - AGENCY	Complaint Against Agency	10	4.3%
LOCAL GOV COMPLAINT	Local Government Complaint	9	3.8%
GOVT-PO COMPLAINT	Complaint Against Government/Public Official	9	3.8%
THANK YOU	Thank You	7	3.0%
SUNSHINE INQUIRY	Sunshine Law Inquiry	7	3.0%
VSR Agency-	Vehicle Stops Report Agency Inquiry	7	3.0%
AGENCY COMPLAINT	State Agency Complaint	5	2.1%
NO-CALL	No-Call	4	1.7%
OBSC MAT	Obscene Material in School	4	1.7%
STAT ON POS	Statement of Constituents Position on Issue	4	1.7%
SCHOOL MAT	Complaint about School Materials	4	1.7%
PROSECUTOR COMPLAINT	Prosecutor Complaint	3	1.3%
FEDERAL COMPLAINT	Federal Agency Complaint	3	1.3%
GENDER THEORY CON	Against Gender Theory in School	3	1.3%
TRANS REG CON	Against Regulation on Gender Trans	3	1.3%
LOCAL SCHOOL COMPL.	Local School Complaint	3	1.3%
TRANS REG PRO	Supports Regulation on Gender Trans	3	1.3%
MOR AGENCY	MJ Offense Report Agency Inquiry	3	1.3%
ABR-PROLIFE	Pro-Life Opinion	2	0.9%
GENDER THEORY PRO	Supports Gender Theory in School	1	0.4%
ASSISTANCE-CIVIL	Assistance-Civil	1	0.4%
SB	Southern Border Crisis	1	0.4%
WAGE/LABOR	Wage/Labor	1	0.4%
PRO VET	Pro Veterans	1	0.4%
ATTORNEY	Attorney Complaint	1	0.4%

AMERICAN OVERSIGHT

Messages Issue Analysis from 9/28/2023 to 10/5/2023

Issue Code	Translation	Count	Pct
COMPLAINT			
SUNSHINE COMPLAINT	Sunshine Law Complaint	1	0.4%
JUDGE COMPLAINT	Judge Complaint	1	0.4%
FIREARM	Firearm Inquiry	1	0.4%
1A.P	First Amendment - Pro	1	0.4%
IMMIGRATION COMPLAIN	Immigration Complaint	1	0.4%
DEPT.CORRECTIO N COMP	Department of Corrections complaint	1	0.4%
COVID RESTRICTION DO.C	Against COVID-19 Restrictions - Con	1	0.4%
INSURANCE COMPL.	Insurance Complaint	1	0.4%
UTILITY COMPLAINT	Non-Billing/Non-Gov. Utility Complaint	1	0.4%
1A SOCIAL MEDIA PRO	Supports Social Media 1st Amendment Suit	1	0.4%
SPAM/JUNK	Spam/Junk	1	0.4%
HT	Human Trafficking	1	0.4%
PUBLICATION REQUEST	Publication Request	1	0.4%
PUBLIC CORRUPTION	Public Corruption	1	0.4%
CHILD SUPPORT	Child Support	1	0.4%
LEGAL OPINION	Legal Opinion Request	1	0.4%
PRICE GOUGING - CP	Price Gouging - Consumer Protection	1	0.4%
DO ON CRT.C	Against Critical Race Theory in Schools	1	0.4%
ASSISTANCE-CRIMINAL	Assistance-Criminal	1	0.4%
	Grand Total:	235	

AMERICAN OVERSIGHT

Executive Summary Drilldown Report

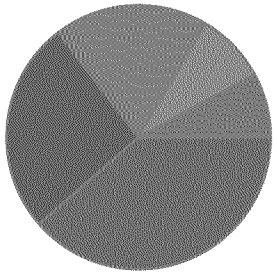
From 09/28/2023 to 10/05/2023

Overall Totals	Messages	Services
Open as of 09/28/2023	258	48
Open as of 10/05/2023	26	48
Received from 09/28/2023 to 10/05/2023	227	1
Received in the Last 10 Weeks	2,896	25
Received in the Last 12 Months	17,285	883
Received Year-to-Date	13,047	699
Completed from 09/28/2023 to 10/05/2023	469	0

AMERICAN OVERSIGHT

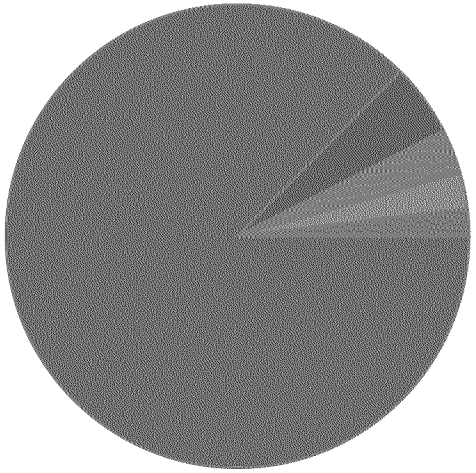
Total Messages Received
227

Top 5 Issues



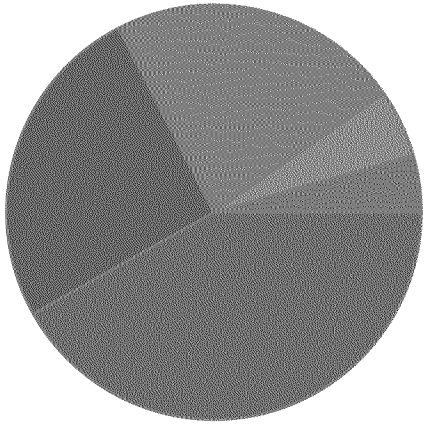
- Legal Assistance, 39% (49)
- Consumer Complaint, 26% (33)
- General Correspondence/Complaint/Inquiry, 19% (24)
- Law Enforcement Complaint, 9% (11)
- Complaint Against Agency, 8% (10)

Top 5 Cities



- NONE, 87% (139)
- Saint Louis, 5% (8)
- Kansas City, 3% (5)
- Joplin, 3% (4)
- High Ridge, 2% (3)

Sources



- Telephone Call, 42% (95)
- Voicemail, 26% (58)
- E-Mail, 23% (52)
- US Mail, 5% (12)
- Non-Deliverable E-Mail, 4% (10)

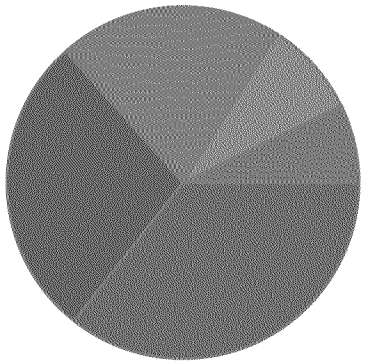
AMERICAN OVERSIGHT

Total Messages Completed
469

Average Completion Time
292 Days

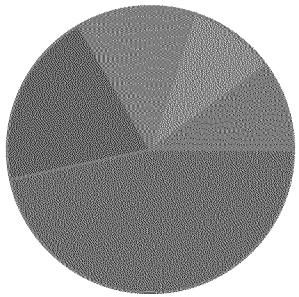
245 Completed with no Response

Top 5 Issues



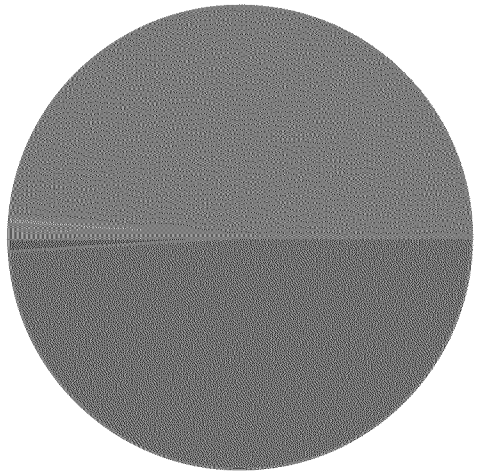
- Complaint About School Materials, 36% (223)
- Against Critical Race Theory In Schools, 28% (174)
- Against Gender Theory In School, 21% (129)
- Obscene Material In School, 9% (55)
- Legal Assistance, 7% (45)

Top 5 Form Letters



- CONSUMER PROTECTION, 47% (14)
- Critical Race Theory, 20% (6)
- THANK YOU FOR YOUR KIND WORDS, 13% (4)
- Unable to Assist - Generic, 10% (3)
- Thank You Letter, 10% (3)

Age

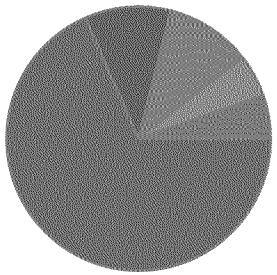


- 7 Days, 49% (230)
- 14 Days, 1% (4)
- 30 Days, 1% (5)
- 60 Days, 0% (2)
- 61+ Days, 49% (228)

AMERICAN OVERSIGHT

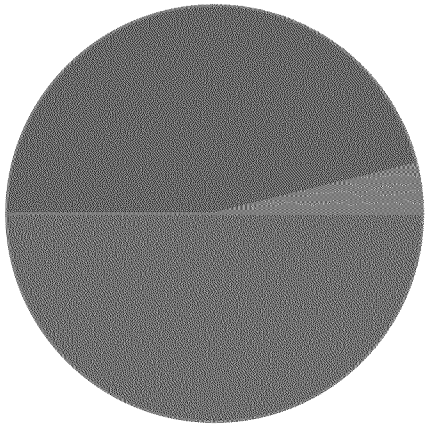
Total Messages Still Open
26

Top 5 Issues



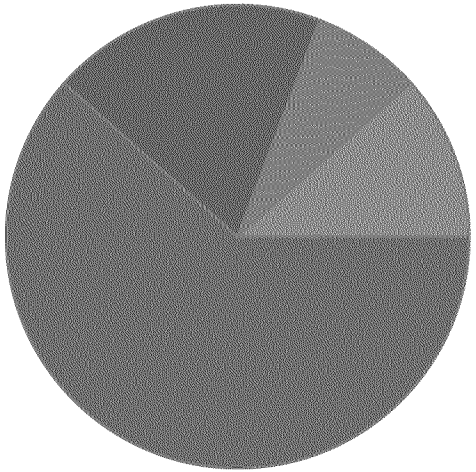
- Legal Assistance, 68% (13)
- General Correspondence/Complaint/Inquiry, 11% (2)
- Local Government Complaint, 11% (2)
- Attorney Complaint, 5% (1)
- Mj Offense Report Agency Inquiry, 5% (1)

Top 5 Assigned To



- Cooper Childers, 50% (13)
- Sheala Dusheke, 46% (12)
- Evan Clausner, 4% (1)

Age

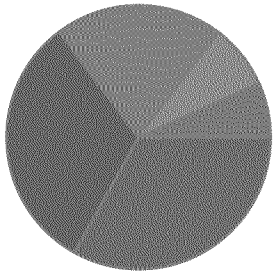


- 7 Days, 62% (16)
- 14 Days, 19% (5)
- 30 Days, 8% (2)
- 60 Days, 12% (3)
- 61+ Days, 0% (0)

AMERICAN OVERSIGHT

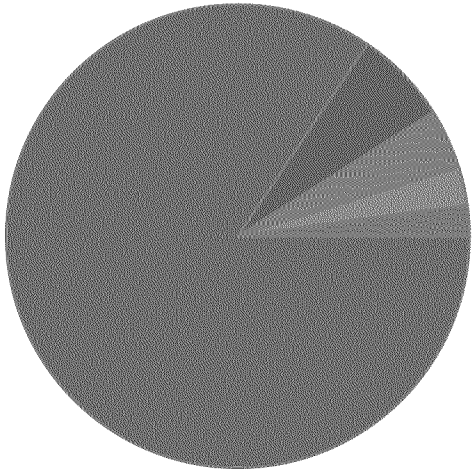
Messages Received
Last 10 Weeks
2,896

Top 5 Issues



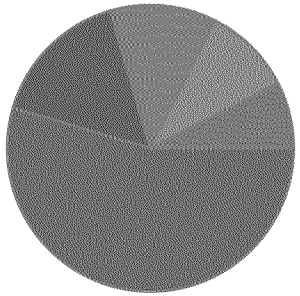
- General Correspondence/Complaint/Inquiry, 33% (570)
- Consumer Complaint, 32% (545)
- Legal Assistance, 21% (356)
- Complaint Against Government/Public Official, 8% (137)
- Law Enforcement Complaint, 7% (115)

Top 5 Cities



- NONE, 84% (1,472)
- Saint Louis, 7% (114)
- Kansas City, 4% (73)
- Springfield, 3% (47)
- Columbia, 2% (37)

Top 5 Form Letters

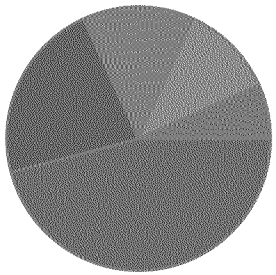


- CONSUMER PROTECTION, 55% (168)
- Request for Assistance With Private Civil Matter, 16% (49)
- Refer to Another Agency, 12% (37)
- MISC. PRIVATE ATTORNEY, 10% (31)
- THANK YOU FOR YOUR KIND WORDS, 7% (23)

AMERICAN OVERSIGHT

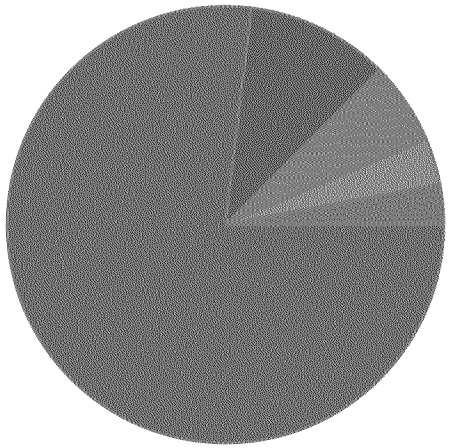
Messages Received
Last 12 Months
17,285

Top 5 Issues



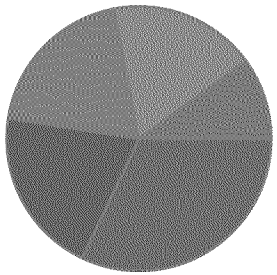
- General Correspondence/Complaint/Inquiry, 46% (4,408)
- Consumer Complaint, 22% (2,137)
- Legal Assistance, 14% (1,310)
- Complaint Against Government/Public Official, 12% (1,110)
- Against Regulation On Gender Trans, 7% (638)

Top 5 Cities



- NONE, 77% (7,395)
- Saint Louis, 11% (1,015)
- Kansas City, 6% (592)
- Springfield, 3% (330)
- Columbia, 3% (283)

Top 5 Form Letters

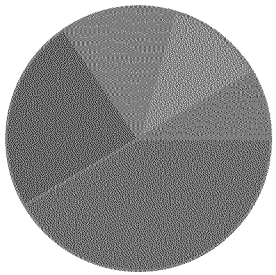


- CONSUMER PROTECTION, 32% (529)
- MISC. PRIVATE ATTORNEY, 20% (337)
- CDC COVID Vax, 20% (323)
- EMERGENCY REGULATION ON GENDER TRANSITION INTERVENTIONS FOR MINORS - AGAINST, 18% (297)
- KIM GARDNER QUO WARRANTO, 10% (165)

AMERICAN OVERSIGHT

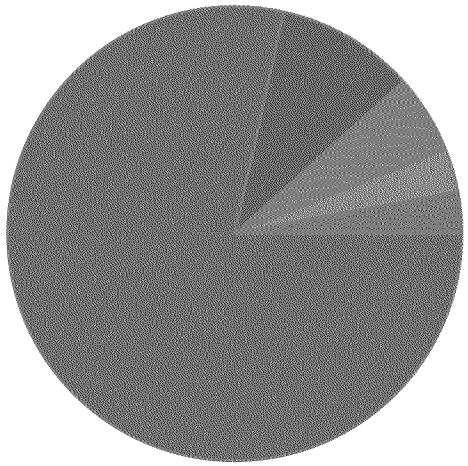
Messages Received
Year-to-Date
13,047

Top 5 Issues



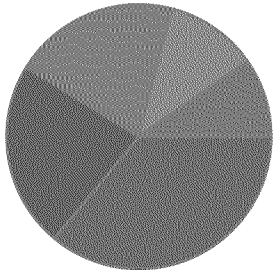
- General Correspondence/Complaint/Inquiry, 42% (3,172)
- Consumer Complaint, 24% (1,822)
- Legal Assistance, 14% (1,069)
- Complaint Against Government/Public Official, 12% (929)
- Against Regulation On Gender Trans, 8% (638)

Top 5 Cities



- NONE, 78% (5,949)
- Saint Louis, 10% (746)
- Kansas City, 6% (426)
- Columbia, 3% (236)
- Springfield, 3% (223)

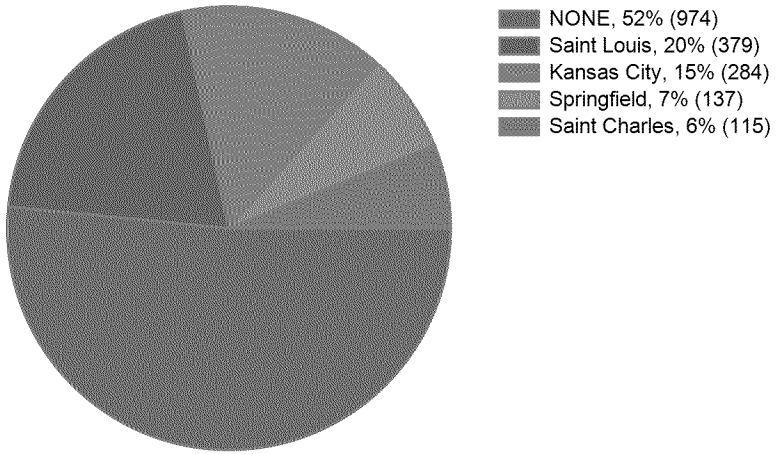
Top 5 Form Letters



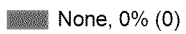
- CONSUMER PROTECTION, 36% (528)
- MISC. PRIVATE ATTORNEY, 23% (333)
- EMERGENCY REGULATION ON GENDER TRANSITION INTERVENTIONS FOR MINORS - AGAINST, 20% (297)
- KIM GARDNER QUO WARRANTO, 11% (165)
- THANK YOU FOR YOUR INPUT, 10% (142)

AMERICAN OVERSIGHT

Email Top 5 Cities



Postal Top 5 Cities



AMERICAN OVERSIGHT

Letter Name	Date Sent	Number Sent	Number Viewed
Jackson County Prosecutor Abortion Suit	10/03/2023	5684	2183

AMERICAN OVERSIGHT

To: Senior Leadership Team[seniorleadershipteam@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 10/5/2023 11:11:55 AM (UTC-05:00)
Subject: Fwd: IQ Weekly Report
MOAG_Messages_Issue_Analysis_2023105_103211.rtf
ExecutiveSummaryDrilldown_2023105_104740.pdf

FYI
Sent from my iPhone

Begin forwarded message:

From: "Childers, Cooper" <Cooper.Childers@ago.mo.gov>
Date: October 5, 2023 at 10:04:21 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: IQ Weekly Report

Maddie:
See the weekly IQ Reports for Constituent Services, as well as a summary of the major issues of the week.

Major Issues of the Week (09/28/23-10/05/23), in order of magnitude:

1. Complaint about School Materials
2. Supports Action on Gender Transitions (Wentzville Schools Open Records Suit)
3. Pro-Life Opinion
4. Pro-Veterans Opinion
5. Southern Border Crisis Complaint

Thanks,
Cooper Childers | Constituent Services Coordinator
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8817
Cooper.Childers@ago.mo.gov

AMERICAN OVERSIGHT

Executive Summary Drilldown Report

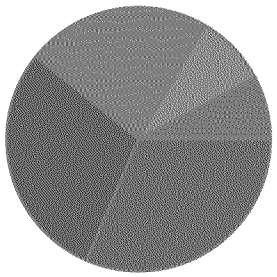
From 08/31/2023 to 09/07/2023

Overall Totals	Messages	Services
Open as of 08/31/2023	74	39
Open as of 09/07/2023	72	39
Received from 08/31/2023 to 09/07/2023	284	0
Received in the Last 10 Weeks	3,160	29
Received in the Last 12 Months	17,591	947
Received Year-to-Date	11,930	689
Completed from 08/31/2023 to 09/07/2023	298	0

AMERICAN OVERSIGHT

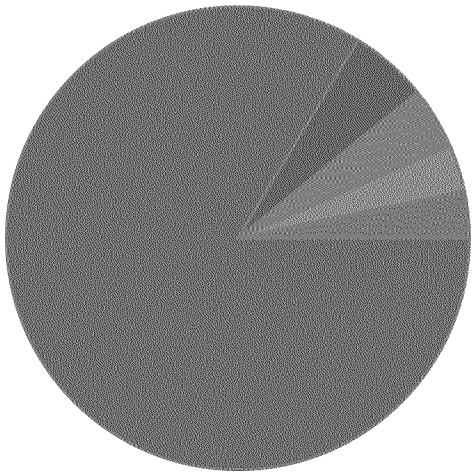
Total Messages Received
284

Top 5 Issues



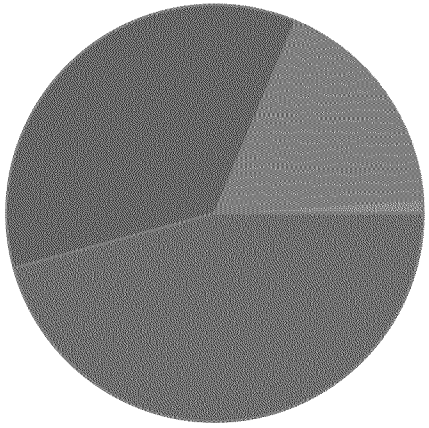
- General Correspondence/Complaint/Inquiry, 31% (57)
- Consumer Complaint, 29% (53)
- Legal Assistance, 23% (41)
- Complaint Against Agency, 9% (16)
- Complaint Against Government/Public Official, 8% (14)

Top 5 Cities



- NONE, 84% (154)
- Saint Louis, 5% (10)
- Kansas City, 4% (8)
- Columbia, 3% (6)
- Springfield, 3% (6)

Sources



- Telephone Call, 46% (130)
- E-Mail, 36% (101)
- Voicemail, 18% (50)
- US Mail, 1% (3)

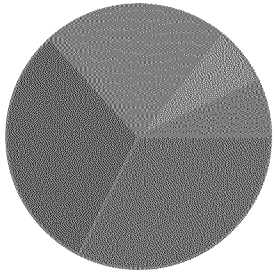
AMERICAN OVERSIGHT

Total Messages Completed
298

Average Completion Time
11 Days

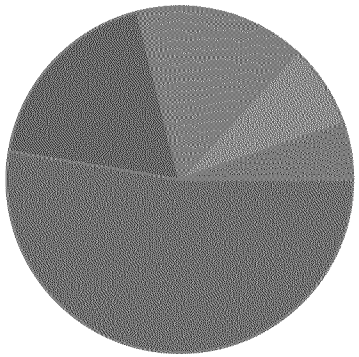
151 Completed with no Response

Top 5 Issues



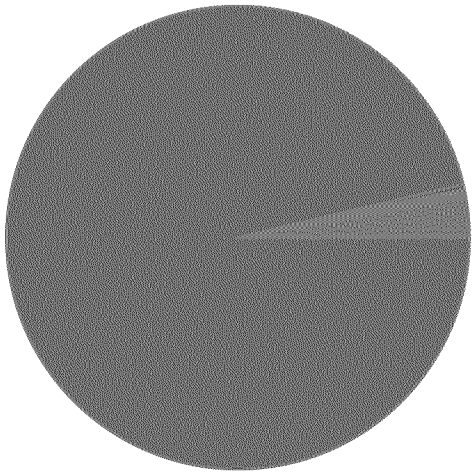
- General Correspondence/Complaint/Inquiry, 32% (61)
- Consumer Complaint, 31% (58)
- Legal Assistance, 22% (42)
- Complaint Against Agency, 7% (14)
- Complaint Against Government/Public Official, 7% (13)

Top 5 Form Letters



- CONSUMER PROTECTION, 53% (20)
- Request for Assistance With Private Civil Matter, 18% (7)
- Refer to Another Agency, 16% (6)
- NO-CALL, 8% (3)
- Local Law Enforcement Prosecutor Discretionary Matter, 5% (2)

Age

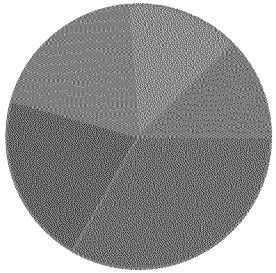


- 7 Days, 96% (287)
- 14 Days, 0% (1)
- 30 Days, 1% (2)
- 60 Days, 0% (0)
- 61+ Days, 3% (8)

AMERICAN OVERSIGHT

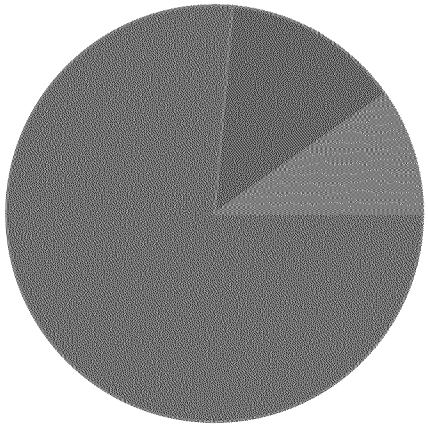
Total Messages Still Open
72

Top 5 Issues



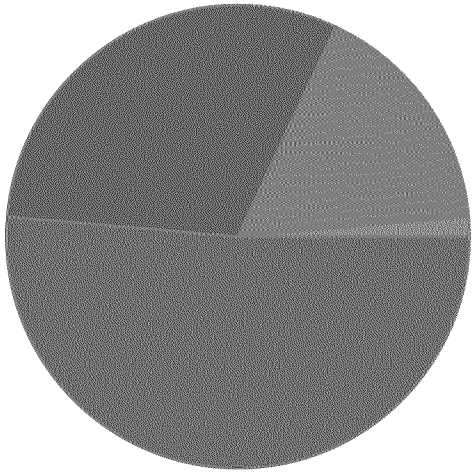
- General Correspondence/Complaint/Inquiry, 33% (19)
- Against Covid-19 Restrictions, 21% (12)
- Complaint Against Government/Public Official, 19% (11)
- Legal Assistance, 14% (8)
- Complaint Regarding Charges Against Trump, 12% (7)

Top 5 Assigned To



- Cooper Childers, 76% (55)
- Sheala Dusheke, 14% (10)
- Evan Clausner, 10% (7)

Age

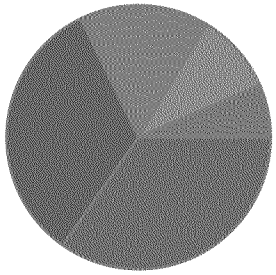


- 7 Days, 51% (37)
- 14 Days, 31% (22)
- 30 Days, 17% (12)
- 60 Days, 1% (1)
- 61+ Days, 0% (0)

AMERICAN OVERSIGHT

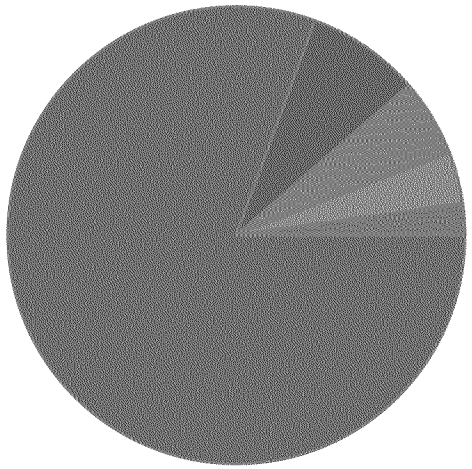
Messages Received
Last 10 Weeks
3,160

Top 5 Issues



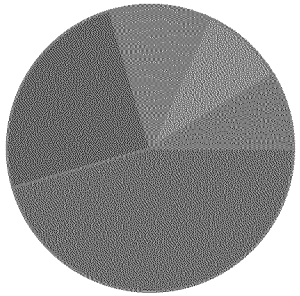
- Consumer Complaint, 35% (610)
- General Correspondence/Complaint/Inquiry, 33% (580)
- Legal Assistance, 16% (279)
- Complaint Against Government/Public Official, 10% (173)
- Private Attorney, 6% (113)

Top 5 Cities



- NONE, 81% (1,457)
- Saint Louis, 8% (145)
- Kansas City, 6% (100)
- Springfield, 4% (66)
- Columbia, 2% (40)

Top 5 Form Letters

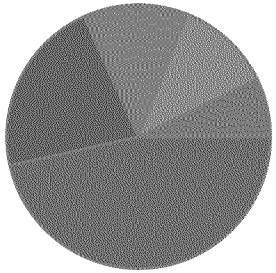


- CONSUMER PROTECTION, 46% (185)
- MISC. PRIVATE ATTORNEY, 25% (101)
- THANK YOU FOR YOUR KIND WORDS, 11% (46)
- Request for Assistance With Private Civil Matter, 10% (39)
- THANK YOU FOR YOUR INPUT, 9% (35)

AMERICAN OVERSIGHT

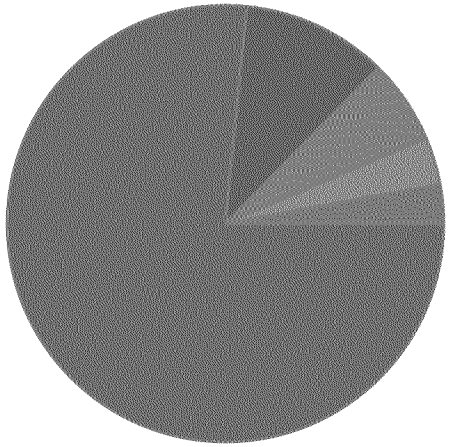
Messages Received
Last 12 Months
17,591

Top 5 Issues



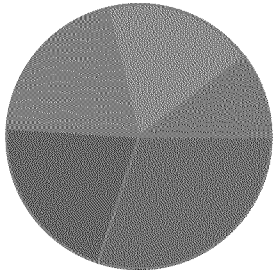
- General Correspondence/Complaint/Inquiry, 47% (4,460)
- Consumer Complaint, 22% (2,084)
- Legal Assistance, 13% (1,229)
- Complaint Against Government/Public Official, 12% (1,130)
- Statement Of Constituents Position On Issue, 7% (688)

Top 5 Cities



- NONE, 77% (7,381)
- Saint Louis, 11% (1,037)
- Kansas City, 6% (605)
- Springfield, 4% (338)
- Columbia, 3% (277)

Top 5 Form Letters

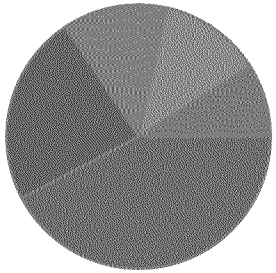


- CONSUMER PROTECTION, 30% (481)
- MISC. PRIVATE ATTORNEY, 21% (337)
- CDC COVID Vax, 20% (323)
- EMERGENCY REGULATION ON GENDER TRANSITION INTERVENTIONS FOR MINORS - AGAINST, 19% (297)
- KIM GARDNER QUO WARRANTO, 10% (165)

AMERICAN OVERSIGHT

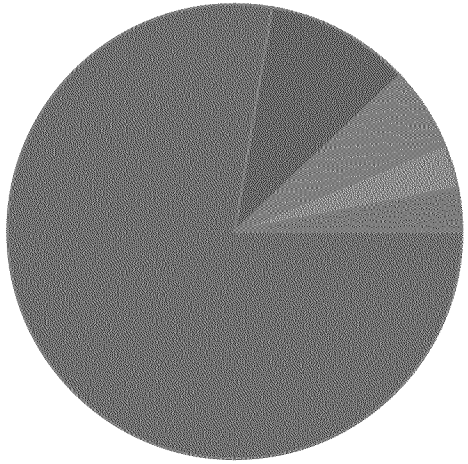
Messages Received
Year-to-Date
11,930

Top 5 Issues



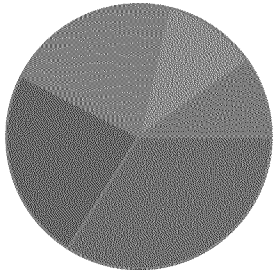
- General Correspondence/Complaint/Inquiry, 42% (2,989)
- Consumer Complaint, 23% (1,647)
- Legal Assistance, 13% (903)
- Complaint Against Government/Public Official, 13% (894)
- Against Regulation On Gender Trans, 9% (632)

Top 5 Cities



- NONE, 78% (5,317)
- Saint Louis, 10% (705)
- Kansas City, 6% (400)
- Columbia, 3% (217)
- Springfield, 3% (209)

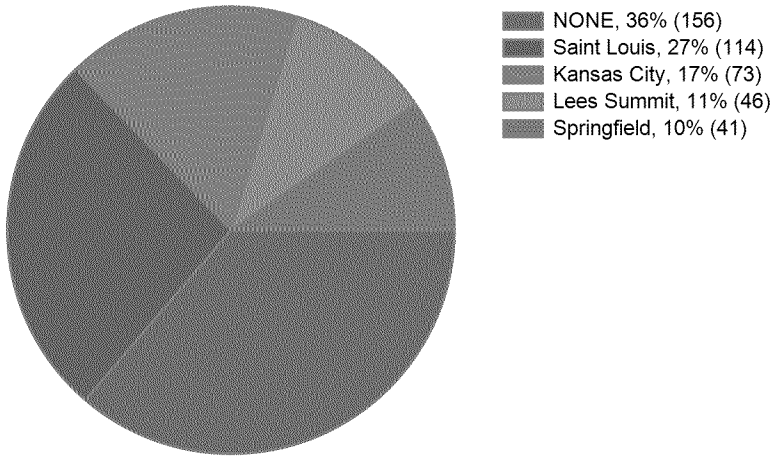
Top 5 Form Letters



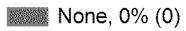
- CONSUMER PROTECTION, 34% (480)
- MISC. PRIVATE ATTORNEY, 24% (333)
- EMERGENCY REGULATION ON GENDER TRANSITION INTERVENTIONS FOR MINORS - AGAINST, 21% (297)
- KIM GARDNER QUO WARRANTO, 12% (165)
- THANK YOU FOR YOUR INPUT, 10% (137)

AMERICAN OVERSIGHT

Email Top 5 Cities



Postal Top 5 Cities



AMERICAN OVERSIGHT

Letter Name	Date Sent	Number Sent	Number Viewed
AG Bailey Notice to Cease Experimental Treatment of Minors	08/31/2023	1310	467

AMERICAN OVERSIGHT

Messages Issue Analysis from 8/3/2023 to 9/7/2023

Issue Code	Translation	Count	Pct
CORR-COMPL-INQUIRY	General Correspondence/Complaint/Inquiry	349	21.3%
CONSUMER COMPLAINT	Consumer Complaint	299	18.2%
LEGAL ASSISTANCE	Legal Assistance	172	10.5%
GOVT-PO COMPLAINT	Complaint Against Government/Public Official	88	5.4%
COMPLAINT - AGENCY	Complaint Against Agency	59	3.6%
LE COMPLAINT	Law Enforcement Complaint	52	3.2%
AGENCY COMPLAINT	State Agency Complaint	34	2.1%
2A STL NOTICE PRO	Supports AGO Notice on STL Gun Rights 2023	33	2.0%
LOCAL GOV COMPLAINT	Local Government Complaint	31	1.9%
PUBLICATION REQUEST	Publication Request	25	1.5%
THANK YOU	Thank You	24	1.5%
COVID RESTRICTION DO.C	Against COVID-19 Restrictions - Con	20	1.2%
HUNTER BIDEN	HUNTER BIDEN	19	1.2%
STAT ON POS	Statement of Constituents Position on Issue	19	1.2%
SUNSHINE INQUIRY	Sunshine Law Inquiry	18	1.1%
PROSECUTOR COMPLAINT	Prosecutor Complaint	18	1.1%
ASSISTANCE-CIVIL	Assistance-Civil	16	1.0%
EXECUTIVE ORDER	EO/Federal Executive Branch Complaints	16	1.0%
CONTY JAIL COMPLAIN	County Jail Complaint	15	0.9%
JUDGE COMPLAINT	Judge Complaint	15	0.9%
TRANS REG PRO	Supports Regulation on Gender Trans	14	0.9%
CHILD SUPPORT	Child Support	12	0.7%
FEDERAL COMPLAINT	Federal Agency Complaint	12	0.7%
NO-CALL	No-Call	12	0.7%
WAGE/LABOR	Wage/Labor	11	0.7%

AMERICAN OVERSIGHT

Messages Issue Analysis from 8/3/2023 to 9/7/2023

Issue Code	Translation	Count	Pct
LOCAL SCHOOL COMPL.	Local School Complaint	11	0.7%
LEGAL OPINION	Legal Opinion Request	11	0.7%
SUNSHINE COMPLAINT	Sunshine Law Complaint	10	0.6%
NH COMPLAINT	Nursing Home Complaint	10	0.6%
TRUMP CHARGES	Complaint regarding Charges against Trump	10	0.6%
STATUTE INTERPRET.	Request to Interpret Statute or Law	10	0.6%
GUN CONTROL.P	Gun Control - Pro	9	0.5%
INFORMATION REQUEST	Information Request	9	0.5%
SOVEREIGN CITIZEN	Sovereign Citizen Correspondence	9	0.5%
ELEC. INTEG.	Election Integrity	8	0.5%
ATTORNEY COMPLAINT	Attorney Complaint	8	0.5%
MISC. PRIVATE ATTY	Private Attorney	7	0.4%
FIREARM	Firearm Inquiry	7	0.4%
1A SOCIAL MEDIA PRO	Supports Social Media 1st Amendment Suit	7	0.4%
PUBLIC SAFETY	Public Safety	7	0.4%
PUBLIC CORRUPTION	Public Corruption	7	0.4%
UTILITY COMPLAINT	Non-Billing/Non-Gov. Utility Complaint	7	0.4%
1A.P	First Amendment - Pro	6	0.4%
PROP TAX/CO. ASSESS.	Property Tax/County Assessor	6	0.4%
2A STL NOTICE CON	Against AGO Notice on STL Gun Rights 2023	6	0.4%
2A	2nd Amendment Support	6	0.4%
LANDLORD-TENANT	Landlord-Tenant	5	0.3%
JACKSON COUNTY	Jackson County Property Tax Increases June 2023	5	0.3%
HUNTER BIDEN.C	HUNTER BIDEN - Con	4	0.2%
ASSISTANCE-CRIMINAL	Assistance-Criminal	4	0.2%
SPAM/JUNK	Spam/Junk	3	0.2%
PROCLAMATION	Proclamation Request	3	0.2%

AMERICAN OVERSIGHT

Messages Issue Analysis from 8/3/2023 to 9/7/2023

Issue Code	Translation	Count	Pct
REQUEST			
DEPT.CORRECTION COMP	Department of Corrections complaint	3	0.2%
MEDIA INQUIRIES	Requests for comments, quotes, interviews, etc.	3	0.2%
INSURANCE COMPL.	Insurance Complaint	3	0.2%
DISABILITY DISC	Disability Discrimination	3	0.2%
SUNSHINE LAW	Sunshine Law	3	0.2%
OPN. ACTN. SCH MM.P	Opinion on Actions against School Mask Mandate - Pro	2	0.1%
DNR DENALI	DNR Denali Permit Complaint - Jackson / Randolph County	2	0.1%
IMMIGRATION COMPLAIN	Immigration Complaint	2	0.1%
DEF- ACTIVE DUTY	Active-Duty Defenders Assistance Request	2	0.1%
AG HONORS	AG Honors	2	0.1%
THANK YOU - INPUT.P	Thank you for your input - general - Pro	2	0.1%
KIM GARDNER QUO WARR.P	KIM GARDNER QUO WARRANTO - Pro	2	0.1%
SPEAKING REQUESTS	REQUEST AN APPEARANCE	2	0.1%
LEG REFER	Legislator Referral	2	0.1%
DEVALKENAERE CASE.P	DEVALKENAERE CASE - Pro	2	0.1%
TRANS REG CON	Against Regulation on Gender Trans	2	0.1%
ESG COMPLAINT	ESG Complaint	1	0.1%
ABR-PROLIFE	Pro-Life Opinion	1	0.1%
STL TRANS CENTER CON	Against AGO statement on STL trans center	1	0.1%
DSAPRV COVID VAX PP	Disapproval of COVID Vax Passports	1	0.1%
GUN CONTROL.C	Gun Control - Con	1	0.1%
JACKSON COUNTY.C	Jackson County Property Tax Increases June 2023 - Con	1	0.1%
CLIMATE CHANGE - OP	Climate Change Opposed to Our Actions	1	0.1%
ABORTION IP.C	Initiative Petition Hold Up - Con	1	0.1%
1A PC AUG 22	1A/Freedom of Expression Postcard Aug. '22	1	0.1%
AGRICULTURE	Agriculture	1	0.1%

AMERICAN OVERSIGHT

Messages Issue Analysis from 8/3/2023 to 9/7/2023

Issue Code	Translation	Count	Pct
FREE SPEECH	Free Speech	1	0.1%
EMPLOYER VAX REQ.	Issues with Employers/Universities Requiring Vaccines	1	0.1%
STATE AGENCY LEGAL Q	State Agency Legal Question	1	0.1%
2APA.P	Second Amendment Preservation Act - Pro	1	0.1%
BIGTECH	Big Tech	1	0.1%
OBSC MAT	Obscene Material in School	1	0.1%
2A - PISTOL BRACE.C	President Bidenâ€™s unlawful pistol brace rule - Con	1	0.1%
KIM GARDNER QUO WARR	KIM GARDNER QUO WARRANTO	1	
MARRIAGE ABROAD	Marriage Abroad	1	
DEF- VET (INACTIVE)	Veteran Legal Assistance Request	1	
STLCO COVID RST. TY	STLCO COVID Restrictions Thank You	1	
KIM GARDNER RESIGNAT.P	Announced resignation of St. Louis Circuit Attorney Kim Gardner - Pro	1	
CDC COVID VAX	CDC COVID Vax	1	
STUD LOAN BRIEF PRO	Supports Brief in Student Loan case	1	
DRUGS - OPIOIDS	Opioid/Drug Addiction	1	
	Grand Total:	1640	

AMERICAN OVERSIGHT

To: Senior Leadership Team[seniorleadershipteam@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 9/7/2023 1:48:45 PM (UTC-05:00)
Subject: FW: CS Reports 08/31 - 9/6
ExecutiveSummaryDrilldown_202397_122141.pdf
MOAG_Messages_Issue_Analysis_202397_123315.RTF

FYI: Constituent Services reports for the past week.
Beyond the typical correspondence regarding complaints about an agency or a request for legal assistance/a publication sent to them, constituents reached out the most regarding:
1) consumer complaint
2) thankful for stance on STL gun issue v. Mayor Jones
3) concern about return of COVID restrictions
4) thankful for action on SB 49
4) Hunter Biden
5) concern about schools
6) Trump indictment
Let Cooper or I know if there are any questions,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Childers, Cooper <Cooper.Childers@ago.mo.gov>
Sent: Thursday, September 7, 2023 11:50 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: CS Reports 08/31 - 9/6
Maddie:

Attached are the CS Message Reports generated for the dates 8/31 - 9/7. Let me know if there are any questions.
Sorry for the minor delay. I accidentally chose the wrong dates with the first report I generated so I had to run it again.

Thanks,

Cooper Childers | Constituent Services Coordinator
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8817
Cooper.Childers@ago.mo.gov

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-078 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-078)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-078 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-078 is identical to 24-077 with the following exception:

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Comments:

The fiscal impact for 24-078 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-078 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact is anticipated to their office.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-078 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-078 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-081 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-081)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-081 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-081 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall

AMERICAN OVERSIGHT

permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Comments:

The fiscal impact for 24-081 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-081 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-081 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-081 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN
LIFE
MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-082 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-082)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-082 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-082 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-082 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-082 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-082 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-082 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-084 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-084)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-084 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-084 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's las menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077).

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-084 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-084 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-084 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-084 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have has no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-085 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-085)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-085 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-085 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Adds definition for Fetal Viability in Section 36.10(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-085 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-085 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-085 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-085 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-086 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-086)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-086 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-086 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes Section 36.6 "Nothing in this Section requires government funding of abortion other than as required by federal law"

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.8(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-086 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-086 has no fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-086 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-086 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-087 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-087)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-087 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-087 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077)

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the .fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-087 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-087 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-087 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-087 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

  - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
  - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

    - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
    - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
    - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
    - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
    - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

      - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
Cc: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Corrigan, William[William.Corrigan@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Wed 3/29/2023 8:48:43 AM (UTC-05:00)
Subject: Fwd: Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor on petition numbers 2024-077 to 2024-087

More-

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: March 28, 2023 at 11:49:03 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor on petition numbers 2024-077 to 2024-087

Ray,
Here is what was forwarded to me what St. Louis attorney David C. Drury sent to the state auditor:

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years. Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri.

Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the suggested versions require no

AMERICAN OVERSIGHT

parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result.The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it).With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed.What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy.A growing population encourages others to move here which in turn results in additional fiscal activity.And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)

Sam

AMERICAN OVERSIGHT

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

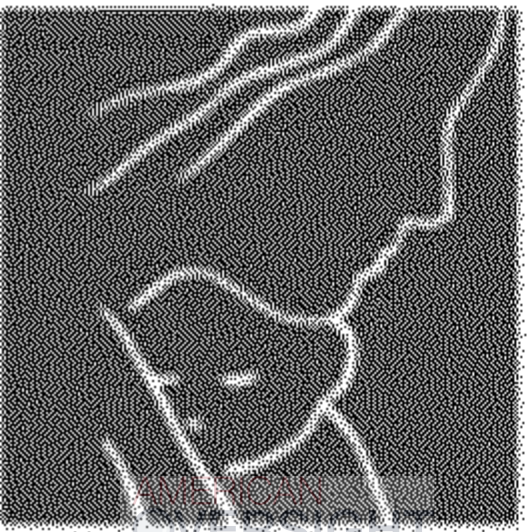
Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT



CAMPAIGN

LIFE

MISSOURI

AMERICAN OVERSIGHT

P.O. Box 142585 • St. Louis, MO 63114-0585

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of

AMERICAN OVERSIGHT

one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, but many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20001
Email: rachel.greszler@heritage.org

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

AMERICAN OVERSIGHT

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]
Cc: Corrigan, William[William.Corrigan@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Sun 4/2/2023 10:55:04 PM (UTC-05:00)
Subject: Fwd: Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor
image001.jpg
Greszler_Heritage_Fiscal Note Missouri Pro-Abortion Petitions.docx

another letter in the earlier stage.

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: April 2, 2023 at 9:37:38 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor

Ray,
Attached is the comment of Rachel U. Greszler with The Heritage Foundation submitted to the Missouri State Auditor.
Rachel is a Senior Research Fellow, Grover M. Hermann Center for the Federal Budget at Heritage.
Sam
Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

AMERICAN OVERSIGHT

Comment on Proposed Ballot Initiatives 2024-077 through 2024-087 filed by Missourians for Constitutional Freedom, all titled "The Right to Reproductive Freedom Initiative"

Date: 7 April 2023 [Submitted Via Email]

To: The Honorable John R. Ashcroft
Secretary of State
State of Missouri

Dear Secretary Ashcroft:

This comment is submitted in response to the Missouri Secretary of State's receipt of a series of proposed ballot amendments which would significantly alter the way abortion is regulated in Missouri, permitting more abortions with less oversight than at any point in recent memory.

The Secretary of State's summaries will provide Missourians with critical information about these proposals and must accurately address the extent to which, if adopted, any of the proposals would fundamentally change abortion and parental rights in Missouri. Although there is a separate fiscal statement, it is worth noting that passage of any of these proposals could expose the state to litigation expenses and potentially costly legal liability if healthcare professionals are forced to violate their federally-protected conscience rights. The Secretary of State's summaries will be the official statement of the government of Missouri and must accurately explain to voters the stakes of enacting the proposals, not just to mothers and their children, but to the state as a whole.

The proposals would be a significant break from Missouri's longstanding commitment to the life, health, and well-being of unborn children.

Although there is some variation among the proposals, we write to highlight the similarities. Every proposal would create a fundamental right to abortion and immunize from liability anyone "assisting a person" in acting upon that right "with that person's consent." This would essentially invalidate Missouri's requirements that abortions be performed by a licensed physician with clinical privileges at a local hospital. It would provide cover for a coercive parent, partner or abuser who obtained abortion drugs online if she later tells police that she consented to taking the medications.

Proposals 77, 78, 79, 82, 84, 86, and 87 would infringe on the parental rights of Missouri families by striking the parental consent law and allowing abortions to be done on girls of any age without their parents even knowing. Even those proposals that purport to permit a lesser version of parental consent or notice (Proposals 80, 81, 83, and 85) only authorize one-parent consent, even where there is shared custody. Moreover, the amendments gut parental consent authorization by allowing the abortionist to disregard the lack of consent where the abortionist "in good faith" believes *either* the minor is mature and capable of consenting, *or* consent is not in her best interests, *or* consent "may" lead to "physical or emotional harm to the minor." There is no authorization of even judicial bypasses; the abortionist makes the call in-house, with no independent review even though he or she has a financial incentive to do the abortion. In short, the supposed authorization of parental consent is a sham. This would place young Missourians at a heightened risk of making irreversible, damaging decisions at the behest of a partner or abuser without the counsel or support of the people who have the greatest interest in their wellbeing, their mom and dad.

Not one of these proposals considers the life, health, or future of the tiny human in the womb, except, quite weakly, after 24 weeks LMP or after viability, both measurements that fall many weeks after an unborn child feels pain. Even

AMERICAN OVERSIGHT

that authorization of limits on late-term abortions has no real teeth, as it imposes an exception for "good faith" abortionist procedures done to protect maternal "physical or *mental* health" or for a "nonviable pregnancy" (which presumably means serious prenatal maladies). In other words, the amendment requires the state to "trust the abortionist" even with late-term abortions. This change in policy, if adopted, would contradict two centuries of Missouri laws. Missouri criminalized "caus[ing] or procur[ing] a miscarriage" as early as 1825, and during the five decades of *Roe v. Wade*, Missouri repeatedly passed and defended pro-life laws and the cause of the unborn in federal courts as it pushed back against *Roe.*

For over three decades it has been the policy of the state of Missouri that:

> "(1) The life of each human being begins at conception;
>
> (2) Unborn children have protectable interests in life, health, and well-being;
>
> (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.
>
> …[T]he laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state."

Missouri has enacted dozens of laws to this effect, nearly all of which would be invalidated by any of these proposals. The variations among these proposals—whether abortion funding is expressly disavowed, whether a weak parental consent regulation could remain in place, and whether any post-24 week or post-viability limits are allowed—which proponents falsely call "compromise"—are dwarfed by the huge concession handed to the abortion industry: the creation of a fundamental right to abortion.

Several of the proposals would invalidate Missouri's prohibition on taxpayer funding for abortion, which has been in effect for decades. Proposals 78, 80, 82, 83, and 86 would likely *require* taxpayer funding, and the remainder could be used to chip away at or overturn the funding prohibition by leveraging the newly created fundamental right to abortion with alternative theories like equal protection, privacy, or due process. Creating a fundamental right to abortion arms pro-abortion attorneys with a potent weapon against all remaining limits on abortion, no matter how modest.

The proposals would permit abortion for virtually any reason, even later in pregnancy when the unborn child can feel excruciating pain.

Currently, abortion is illegal in Missouri except in the case of a medical emergency. Missouri voters have consistently elected pro-life lawmakers who passed the "trigger law," which took effect on June 24, 2022, when the Supreme Court of the United States returned "the authority to prohibit abortion at all stages of pregnancy" to Congress and the states. The Amendment would set Missouri back decades, returning the state to a regime where abortion doctors are unaccountable for harm they cause to mothers and unborn children are unprotected.

Abortions in Missouri would be almost totally unregulated, and prosecutors would be unable to act if a woman or girl within their jurisdiction was harmed during an abortion. If notorious Philadelphia abortionist Kermit Gosnell, currently serving a life sentence, were to set up shop in Missouri, there is little the state could do about it if he could prove that there were women who sought out his services—denying or revoking the license of a practitioner or business might "infringe on that person's autonomous decision-making" in violation of the proposals.

Proposals 77, 78, and 79 do not identify any gestational limit whatsoever, meaning that children could be killed at any time in pregnancy. Proposals 80, 81, 82, and 84 weakly authorize some limits past 24 weeks' gestation, but since this is past the point when children reach viability, which is now closer to 22 weeks' gestation, these proposals would

AMERICAN OVERSIGHT

allow for the killing of unborn children who could survive outside the womb. Similarly, Proposals 83, 85, 86, and 87, which weakly authorize some limits post-viability, leave the determination of viability to the abortionists' discretion even though he or she has a financial interest in ensuring that the procedure happens. By defining fetal viability as a point in pregnancy when a child can survive "without the application of extraordinary medical measures," the proposals would allow for the late-term abortion of a child who would survive if he or she were treated in the NICU simply because that child needed medical treatment early in life. Leaving ultimate discretion in the hands of the abortionist could be used to allow the killing (through direct or indirect action) of a child born alive after a botched abortion.

Missouri would be extremely limited in how it could restrict late-term abortions. In some proposals, the "health" exception is left undefined, leaving it to the courts to determine how broadly it might be interpreted. A court ideally would look to existing Missouri law and narrowly define it as "a serious risk of substantial and irreversible impairment of a major bodily function." But the proposals abrogate this definition by adding "mental" health and leaving it to the abortionist to make the judgment. In practical effect, these proposals would impose the wide-open definition from *Doe v. Bolton,* namely that "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health." If health means anything and everything, there would be virtually no restriction on abortions throughout pregnancy in Missouri. Ironically, the proposals would prevent commonsense laws that require healthcare professionals to provide women with information about the well-documented negative effects abortion has on a woman's physical, mental, and emotional health.

Furthermore, the proposals would prevent the state from asserting any interests on behalf of the child and would likely be used to challenge laws protecting the conscience rights of healthcare professionals. Laws that help women make their decision such as informed consent, reflection periods, and counseling about resources and alternatives to abortion could all be struck down, even though serving otherwise legitimate state's interests, just because those interests arguably are not *directly* tied to the "health of a person seeking care." The proposals could have unforeseen consequences on child-welfare laws or other laws that govern the treatment of human remains, reporting deaths of human beings, or other laws adjacent to the abortion procedure.

The proposals do not recognize Missouri's interest in the unborn child. His or her health, wellbeing, or chance at life is never considered anywhere in the proposals as currently written. If added to the Missouri Constitution, the proposals would assert that Missouri has *no* interest in the child and could be used as a tool of future courts to invalidate any protections that remained.

Missouri would rival California, Colorado, and New Mexico in its extremism if these proposals were to pass. The state would become an abortion destination for the region.

The Secretary's summaries must explain the stakes of these proposals, including the major changes each would make to the Missouri Constitution.

The proposals would create a right to abortion in Missouri law which has never existed in the state's history by extending even further than the failed framework that the Supreme Court of the United States discarded in 2022. As the multitudinous decisions of the Supreme Court demonstrate, *Roe v. Wade*'s creation of a "constitutional right" to abortion did not resolve the issue. Instead, the Court faced decades of abortion-related litigation over the Court's invented "right" to abortion and efforts by legislatures to affirm the sanctity of unborn human life, protect women from abusive practices, and address the problem of unsafe abortion practices.

If Missouri were to pass such an amendment, the state's Supreme Court would have to grapple with a similar parade of questions, to be answered with only the aid of vague state constitutional text. These proposals would expose the state to vast liability and clog up state courts with decades of litigation and showdowns between the three branches of government.

The Secretary's summaries must not fall into the same dehumanizing pattern we've been subjected to since the imposition of *Roe v. Wade,* applying euphemisms like the "right to abortion" when the reality of each of these

AMERICAN OVERSIGHT

proposals is clear. This would establish a legal right, greenlit by the state constitution, to kill tiny, innocent human beings. Even in *Roe,* the Court acknowledged, citing to an American Medical Association report, that what was at stake was the "destruction of human life."

In that report, published in 1871, the AMA doctors stated: "**We had to deal with human life.** In a matter of less importance we could entertain no compromise. **An honest judge on the bench would call things by their proper names. We could do no less**" [emphasis added].

150 years later, with extraordinary advances in medical technology that give us a window into the womb, we must be honest just as those doctors were. What's at stake is the lives of unborn babies, the safety of their mothers, and the degradation of medical practice and the law in Missouri.

We oppose the proposed ballot amendments and encourage the Secretary of State to publish a final summary that accurately reflects the magnitude of this initiative's change to Missouri's law and culture.

Submitted on behalf of Susan B. Anthony Pro-Life America and ACLJ Action.

Stephen Billy, J.D.
VP of State Affairs

Katie Glenn, J.D.
State Policy Director
Susan B. Anthony Pro-Life America
sbaprolife.org
Arlington, VA
202-223-8073

James Rockas
Executive Director

Robert Burkett
Senior Advisor and Chief of Staff
ACLJ Action, Inc.
acljaction.org
Washington, D.C.
833-437-0399

Susan B. Anthony Pro-Life America is a network of more than one million pro-life Americans nationwide, dedicated to ending abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders.

ACLJ Action, Inc. is an organization dedicated to the defense of constitutional values, liberty, and religious freedom in the U.S. and abroad.

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (20-R001)

Subject

Referendum petition from Sara Baker regarding Senate Substitute for Senate Committee Substitute for House Bill No. 126. (Received May 28, 2019)

Date

June 17, 2019

Description

Voters will approve or reject this statutory change.

The referendum is to be voted on in November 2020.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education,** the **Department of Health and Senior Services,** the **Department of Insurance, Financial Institutions and Professional Registration,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, St. Louis Community College,** and **Missouri Life Sciences Research Board.**

AMERICAN OVERSIGHT

Judy Morgan, District 24, Ingrid Burnett, District 19, and Donna Baringer, District 82, members of the Missouri House of Representatives Fiscal Review Committee provided information to the State Auditor's office.

Sarah Nesbitt, Washington University graduate and 240 graduates of Missouri institutions of higher education provided information to the State Auditor's office.

Mark R. Reading and Bret Fischer provided information to the State Auditor's office.

Kip Kendrick, State Representative, District 45, Ranking Member House Budget Committee provided information to the State Auditor's office.

Sarah W. Martin, 11th Ward Alderwoman, Lyda Krewson, Mayor, Annie Rice, 8th Ward Alderwoman, Dan Guenther, 9th Ward Alderman, Larry Arnowitz, 12th Ward Alderman, Cara Spencer, 20th Ward Alderwoman, Bret Narayan, 24th Ward Alderman, Shane Cohn, 25th Ward Alderman, and Heather Navarro, 28th Ward Alderwoman from City of St. Louis provided information to the State Auditor's office.

Assumptions

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated this legislation does not impact their department.

Officials from the **Department of Higher Education** indicated they report no fiscal impact for HB 126 as Truly Agreed and Finally Passed (TAFP).

Officials from the **Department of Health and Senior Services** indicated this referendum has no impact.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Labor and Industrial Relations** indicated initiative petition 20-R001 does not appear to have a fiscal impact on their department.

Officials from the **Department of Revenue** indicated their department has no impact for this fiscal note.

Officials from the **Department of Public Safety - Office of the Director** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this referendum petition.

Officials from the **Governor's office** indicated there should be no added costs or savings to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated no adverse fiscal impact to their department would be expected as a result of the proposal.

Officials from the **Department of Transportation** indicated this referendum petition would have no impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated the referendum petition would put the provisions of HB 126 to a vote of the people in the November 2020 general election.

HB 126 provides that for all tax years beginning on or after January 1, 2021, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal to 70% of the amount such taxpayer contributed to a pregnancy resource center, an increase from the 50% previously allowed. The fiscal note for HB 126 estimates that this increase will result in a loss to General Revenue that could exceed $1.4 million annually beginning in Fiscal Year 2022.

HB 126 removes the December 31, 2024 sunset on the pregnancy resource center tax credit. The fiscal note for HB 126 estimates that the removal of the sunset will result in a loss to General Revenue that could exceed $4.9 million annually beginning in Fiscal Year 2026.

HB 126 expands the definition of pregnancy resource center to include facilities that offer services under the Alternatives to Abortion Program. It also removes the cap on the pregnancy resource tax credit for all fiscal years beginning on or after July 1, 2021. The fiscal note for HB 126 notes that these provisions, as well as the increased tax credit percentage, could increase utilization of the pregnancy resource center tax credit by an unknown amount.

AMERICAN OVERSIGHT

Therefore, because HB 126 is estimated to reduce General Revenue by an amount that could exceed $4.9 million once the provisions are fully implemented in Fiscal Year 2026, if HB 126 were repealed there could be a positive impact to General Revenue that could exceed $4.9 million.

This should not impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Office of the State Public Defender** indicated Referendum Petition 20-R001 "Abortion" will have an unknown but significant fiscal impact on the State Public Defender System. Referendum Petition 20-R002 creates a new Class B felony for "any person who knowingly . . . induces an abortion of an unborn child . . . ," which arguably would include post-conception contraception. If so, this would result in the prosecution of an unknown but significant number of indigent women throughout the state which would require representation by the State Public Defender System for the purpose of the referendum petition and as a result of excessive caseloads, their office CANNOT assume existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of knowingly performing or inducing an abortion of an unborn child. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. Their office will continue to request sufficient appropriations to provide competent and effective representation in all criminal cases where the right to counsel attaches.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this referendum petition.

Officials from the **City of Kansas City** indicated they cannot appreciate or ascertain any reasonable estimate of direct fiscal impact.

Officials from the **City of St. Louis** indicated their local government estimates the fiscal impact of the bill for fiscal years 2020, 2021 and 2022 to be as follows:

In their city, ensuring access to high-quality family planning and reproductive health services for all women, especially those who are uninsured or underinsured, is critical to improving health outcomes for the St. Louis region. Planned Parenthood and Federally Qualified Health Centers (FQHC) in their city serve as safety nets for the aforementioned population. FQHCs provide comprehensive services, which include, but are not limited to: women' s health (obstetrics/gynecology, family planning, pregnancy testing, childbirth classes), pediatrics and teens, immunizations, adult medical services, sexually transmitted

AMERICAN OVERSIGHT

infections testing (including HIV) and treatment, dental, lead screening and treatment, and diabetes and nutrition education classes.

Planned Parenthood offers a variety of family planning, cancer prevention, and comprehensive reproductive health services, which include but are not limited to: annual gynecological exams, cervical cancer screenings, birth control, breast exams, STI testing and treatment, abortion care, emergency contraception, pregnancy tests, HPV vaccinations, urinary tract infection treatment, and vasectomies. If Planned Parenthood is no longer able to provide comprehensive reproductive and family planning services, this will create a critical gap in the St. Louis region' s local public health system infrastructure, which will increase the vulnerability of economically disenfranchised populations who bear the highest burden of poor health outcomes (e.g., maternal mortality, infant mortality, chronic diseases). In addition, this will have a dire fiscal impact on other components of the health system, which will have to absorb the direct and indirect costs of obstetric care and postpartum care for the underinsured, uninsured, and for persons with public insurance (e.g., Gateway for Better Health, Medicaid).

According to recent data, the cost of having a baby in the St. Louis area ranges from $4,668 - $15,607. This range does not include delivery, indirect costs, or other special circumstances that may require additional resources or more specialized medical care. This is a cost that will be paid by hospital systems. In total, the increased costs of full-term OB care, postpartum care, and related administrative costs may exceed $7 million annually.

In addition, the safety net of reproductive care for women with limited means is fragile. If the largest provider of reproductive health care in St. Louis is unable to financially continue to be a cornerstone in the delivery of access to care, the cost in replacing the current reproductive care would be $37 million in direct care costs with an additional $8 million in increased administration costs.

One of the essential services of public health is the assurance that access to care is provided in the regions within the city's authority. The threat of massive disruptions to the delivery of care in the region to potentially vulnerable residents is significant.

They affirm the potential threat of disruption in Medicaid funding that could result from not complying with federal legislation that pledges access to comprehensive reproductive health services. In the past, their city has been penalized by federal agencies for maintaining state legislation that does not conform to minimum standards established by the federal government. Medicaid funding continues to be the glue that holds together the foundational structure for access to care. The impact of losing Medicaid funding will be calamitous to the St. Louis region' s local public health system, and the lives of St. Louis residents and visitors.

AMERICAN OVERSIGHT

Convention and Tourism

Their city has already had one Convention cancel for 2024 due to the passage of HB 126. The summarized data is as follows.

American Society for Engineering Education
Annual Conference & Exposition
Dates: June 15-18, 2024
Attendees: 4,500
Peak/Total Room Nights: 1,700/6,842
Direct Spend Economic Impact: $4.87 million

The speed at which this cancelation came through is indicative that the Convention Business would lose 3 to 4 conventions a year. The American Society for Engineering Education is representative of many of the Conventions that will be booked.

Over the next three years, at a minimum, it is expected that the loss of 3 Conventions a year will result in a $14.61 million dollar loss of economic activity each year in their city.

Loss of Students' Spending while attending our Universities

Information provided by Washington University indicates that their average student spends approximately $81,000 each, which is the impact on the local economy. If both major Universities lose conservatively 100 applicants in each of the next 3 years (200 for 1 year, 200 for 2 years, and 200 for 3 years), the amount of loss local economic activity would be $97,000,000.

Officials from **Wellsville-Middletown R-1 School District** indicated any bill that impacts the ability to provide health-related services to women including contraception, family planning, pre & post-natal services and yes, medically safe abortions, will have a long term fiscal impact on all state services.

Officials from **Metropolitan Community College** indicated no anticipated fiscal impact for their college.

Judy Morgan, District 24, Ingrid Burnett, District 19, and Donna Baringer, District 82, members of the Missouri House of Representatives Fiscal Review Committee provided the following information:

AMERICAN OVERSIGHT

Nicole Galloway, CPA
Missouri State Auditor
Capitol Office
State Capitol, Rm 121
Jefferson City, MO 65101

June 7, 2019

Dear Auditor Galloway,

As members of the Fiscal Review Committee of the Missouri House of Representatives, we are writing in regard to House Bill No. 126, which was passed by the Missouri legislature on May 17, 2019. Specifically, we would like to address the fiscal implications of House Bill No. 126.

First, in the first sentence of paragraph one of the fiscal analysis dated May 16, 2019 (page 3), Oversight noted, "Due to time constraints of less than 1 hour, Oversight was unable to receive some of the agency responses in a timely manner and performed limited analysis." It is quite disconcerting that the Missouri legislature passed House Bill No. 126 when Oversight clearly did not have the time to adequately analyze the fiscal implications of said bill. We consider spending taxpayer dollars with "limited analysis" of its fiscal implications as irresponsible and foolish.

Second, the truly agreed to and finally passed version of House Bill No. 126 made significant changes to the tax credits for pregnancy resource centers. Currently the program has a $2.5 million cap, which will expand to $3.5 million on July 1, 2019, contains a sunset clause of December 31, 2024, and awards taxpayers up to a 50% tax credit for contributions they make to pregnancy resource centers.

House Bill No. 126 removes both the cap and the sunset for pregnancy resource centers and increases the amount of the tax credit awarded to taxpayers from 50 percent to 70 percent of their contributions to such centers. Listed below are relevant statements from the fiscal analysis in regard to the changes in the tax credits for pregnancy resource centers.

- "Also, if the amount of tax credits redeemed in a fiscal year is less than the cumulative amount, the difference shall be carried over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax credits that may be authorized in that fiscal year or years. Therefore, adding unused credits from the previous year(s), the cap in any given year past FY 2019 could well exceed $3.5 million." (Page 3)
- "Oversight notes this proposal allows facilities that offer services under the Alternatives to Abortion program to qualify for the pregnancy resource center. Oversight assumes this could expand the number of pregnancy resource centers that are eligible to distribute this tax credit." (Page 4)
- "Oversight notes that starting January 1, 2021 (FY 2021) this proposal increases the amount of the credit from 50 percent of the contribution to 70 percent of the contribution. Increasing the tax credit amount could encourage additional taxpayers to participate in the program." (Page 4)

AMERICAN OVERSIGHT

- "Oversight notes with the combination of;

    - expanding the definition of pregnancy resource centers;
    - increasing the percentage of the credit; and
    - removing the cap

    would increase the utilization of the credit and Oversight will show all impacts as Could exceed the estimates provided above." (Page 4)

From a fiscal perspective, we are very concerned about the changes House Bill No. 126 stipulated in regard to pregnancy resource centers – from lifting the cap and sunset to increasing the tax credit from 50 percent to 70 percent for contributions. As the fiscal analysis noted with such broad ranging parameters, all the estimates for the cost of implementing these changes are listed in the "Could exceed" range of dollars. Although the fiscal analysis estimated the cost at (Could exceed $1.4 million) in FY 22 and (Could exceed $4.9 million) in FY 26, we are basically working in the dark. Since the amounts are listed as "Could exceed," we actually do not know how much the state coffers will lose based on these changes.

In addition sunsets serve a useful purpose in that the program comes back to the legislature for review automatically on a periodic basis. Removing the sunset means that the legislature will never again look at the tax credit program for pregnancy resource centers.

Third, under current federal law known as the Hyde Amendment, Medicaid is only required to pay for abortions in the cases of rape, incest, or threat to the life of the mother. The fiscal analysis noted, ". . .officials from the Department of Social Services (DSS) stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother." (Page 5)

Oversight documented that Missouri was directed by the United States District Court in 1994 to comply with the requirements of the Hyde Amendment. (Page 6) Furthermore, the fiscal analysis stated, "Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown. Oversight noted in response to House Bill No. 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds." (Page 6)

Therefore, implementation of House Bill No. 126 could result in our state losing the federal dollars we receive for MO HealthNet. According to the fiscal analysis, that amount for Fiscal Year 2019 was over $7.2 billion. (Page 6) Implementing a law that would put the disabled, mentally ill, pregnant women, and children at risk of losing their MO HealthNet coverage is unconscionable.

Fourth, the fiscal analysis noted, "This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide

AMERICAN OVERSIGHT

services to MO HealthNet recipients through these health care providers." (Page 14) Losing the $7.2 billion in federal dollars would also hurt our medical care providers.

We consider House Bill No. 126 as an unconstitutional piece of legislation based on its substance. In addition, Oversight was not provided an adequate amount of time to prepare the fiscal analysis and many uncertainties exist in regard to the fiscal impact House Bill No. 126 will have on our state budget. In closing, thank you for your consideration of this important matter affecting Missouri citizens.

Sincerely,

Judy Morgan
Missouri State Representative
District 24

Ingrid Burnett
Missouri State Representative
District 19

Donna M.C. Baringer
Missouri State Representative
District 82

.

AMERICAN OVERSIGHT

Sarah Nesbitt, Washington University graduate and 240 graduates of Missouri institutions of higher education provided the following information:

AMERICAN OVERSIGHT

Nicole Galloway
Missouri State Auditor
State Auditor's Office, P.O. Box 869
Jefferson City, MO 65102

Dear Auditor Galloway,

As students and alumni of Missouri institutions of higher education, we write to voice our concerns about the harm the implementation of HB 126 would have on the state of Missouri. We write together, as both alumni and current students, deeply concerned about the future of our educational institutions and their ability to thrive should HB 126 go into effect. As you make your assessment of the financial risk posed to our state by this law, we encourage you to note the significant financial consequences of our objection.

None of us would choose to attend college in a state that effectively bans abortion, as this violates both our own autonomy and that of our peers. None of us would choose to further our education in an atmosphere that threatens to criminalize professionals who perform abortion, because we trust our peers who study medicine and our neighbors who practice it. They strive to provide scientifically accurate information and patient-centered care, and we oppose any effort to eclipse those standards.

If Missouri's voters fail to repeal HB 126, we will be forced to withhold support of both state and private educational institutions who have been complicit – including through silence – in its implementation. We encourage you, as Missouri's Auditor, to view each of the undersigned as a potential economic loss to Missouri. In tuition dollars alone, each of us represents tens of thousands of dollars in revenue for Missouri educational institutions annually, and the impact of the loss of our talents, our innovation, and our drive is immeasurable. Even beyond the loss of tuition dollars, taxes, and legal expenses, this measure could cost the state all of its Medicaid funding, $7.2B that provides lifesaving care to Missourians in need.

Preventing Missourians from accessing abortion after eight weeks, before some of them even know they are pregnant, is unconstitutional, dangerous, and a violation of Missourians' individual freedoms; this kind of bar on access to reproductive healthcare only hurts the communities that many of us hold dear. Given the state coffers devoted to defending this unconstitutional measure, and given the number of students that will be deterred from coming to, staying in, or returning to Missouri, the financial consequences of implementig HB 126 are both tangible and substantial. We know the human cost will be far greater.

We believe that with smart policies that leave healthcare decisions to professionals and their patients, Missouri can thrive; HB 126 is just the opposite.

We call on the auditor to understand the potential cost the loss of Missouri's students will have on Missouri, and we call on our universities to echo our concerns by submitting their own fiscal analysis of referendum 2020-2001 to the auditor by Friday, June 7th.

AMERICAN OVERSIGHT

Sincerely,

Sarah Nesbitt
Washington University in St. Louis
Class of 2017

And the Undersigned 240 graduates of more than ten different Missouri institutions of higher education:

Elaine Emmerich	Washington University in St. Louis	Class of 2017
Julia Curbera	Washington University in St. Louis	Class of 2017
Chloe Ames	Washington University in St. Louis	Class of 2017
Nicholas Okafor	Washington University of St. Louis	Class of 2016
Madeline Stewart	Washington University in St. Louis	Class of 2018
Lemoine Joseph	Washington University in St. Louis	Class of 2016
Carly Herbert	Washington University in St Louis	Class of 2017
Savannah rush	Washington university in st louis	Class of 2018
Katelyn Moeder	Washington University in St. Louis	Class of 2017
Fatima	Washington University in St. Louis	Class of 2020
Cameron Kinker	Washington University in St. Louis	Class of 2016
Brianna McCain	Washington University in St. Louis	Class of 2016
David Graham	Washington University in St. Louis	Class of 2018
Talia Weseley	Washington University in St. Louis	Class of 2019
Julie Merrell	Washington University in St. Louis	Class of 2018
Claire Thomas	Washington University in St. Louis	Class of 2018
Jessica Klugman	Washington University	Class of 2017
Mary Prothero	Washington University in St. Louis	Class of 2015
Charles Bosco	Washington University in St. Louis	Class of 2021
Sarah Felts	Truman State University & University of Missouri School of Law	Class of 2009 & Class of 2012
Elayna Levin	Washington University in St. Louis	Class of 2017
Ishaan Shah	Washington University in St. Louis	Class of 2020
Natalie Johnson	Washington University in St. Louis	Class of 2017
Bonnie Simonoff	Washington University in St. Louis	Class of 2019
Jonah Klein-Barton	Washington University in St Louis	Class of 2018

AMERICAN OVERSIGHT

Emily Brown	Washington University in St Louis	Class of 2016
Pia Marcus	Washington University in St Louis	Class of 2013
Julia Kaplan	Washington university in St. Louis	Class of 2012
Maya Mashkovich	Washington University in St. Louis	Class of 2018
Daniela Pedraza	Saint Louis University	Class of 2017
Valerie Hirschberg	Washington University In St. Louis / Harvard University	Class of 2018 and 2020
Brooke Nosratian	Washington University in St. Louis	Class of 2018
Ryan Paige	Washington University in St. Louis	Class of 2017
John Drollinger	Washington University in St. Louis	Class of 2012
Kirk Brown	Washington University in St. Louis	Class of 2020
Michael Gjelsten	Washington University in St. Louis	Class of 2017
Sarah Martin	Washington university in St. Louis	December 2019
Emilia Epstein	Washington University in St. Louis	Class of 2018
Rebecca Naegele	Washington University in St. Louis	Class of 2012
Nathaniel Thomas	Washington University in St. Louis	Class of 2017
Sophie Abo	Washington university in St. Louis	Class of 2019
Mary Ellis	Washington University in St. Louis	Class of 2019
Rachel Bridge	Washington University in St. Louis	Class of 2015
Laken Sylvander	Washington University in St. Louis	Class of 2017
Jessmehar Walia	Washington University in St. Louis	Class of 2017
Anna Poger	Washington University	Class of 1993
Linda Gilbreath	Washington University in St Louis	Class of 2018
Jennifer Box	University of Missouri	Class of 2004
Lisa Beal	Stephens College	Class of 2010
Elyse Max	University of Missouri- Kansas City	Class of 2006
Lauren Hucko	Washington University in St. Louis	Class of 2020
Ashley Kuykendall	Truman State University & Brown School of Social Work at Washington University	Class of 2016, Class of 2019
Carla Max	University of Missouri Columbia	Class of 1971
Archna Calfee MD	Washington University in St Louis	Class of 2001
Sara Goellner	Washington University in St Louis	Class of 1999
Matt Mitchell	University of Missouri Kansas City	Class of 2010
Elisabeth Condon	Truman State University	Class of 2018

AMERICAN OVERSIGHT

Keaton Wetzel	Washington University in St. Louis	Class of 2015
Carlos Sedillo	Truman State University	Class of 2018
Julia Widmann	Washington University in St. Louis	Class of 2018
Marissa Rosen	Washington University in St. Louis	Class of 1998, Class of 2000
Elizabeth K Small	University of Missouri Kansas City	Class of 1978
Amy Soper	Washington University in St. Louis	Class of 2019
Paula Gerber	Washington University School of Medicine	Class of 2001
Nathan Greenberg	Washington University in St. Louis	Class of 2017
Callie Schneider	Washington University in St. Louis	Class of 2016
Sarah Hilderbrand	University of Missouri	Class of 2010
Jaydee Lee	Washington University in St. Louis	Class of 2017
Jacqueline Oestreicher	Washington University in St. Louis	Class of 2018
Martin Elliott	Washington University in St. Louis	Class of 2016
Blake Buthod	Truman State University	Class of 2018
Kari L Chesney	University of Missouri	Class of 2020
Jeremy Shapiro	Washington University in St. Louis	Class of 2019
Carter Paterson	Washington University in St. Louis	Class of 2019
Josh Halilej	Washington's university in St. Louis	Class of 2019
Pranav nandan	Washington University in St. Louis	Class of 2019
Jack Seigel	Brown School of Social Work	Class of 2020
Norah Rast	Washington University in St. Louis	Class of 2017
Yaala Muller	Washington University in St. Louis	Class of 2017
Valorie Engholm	University of Missouri- Kansas City	Class of 2016
Erica Brandling-Bennett	Washington University in St. Louis	PhD Class of 2006
Katie Greenberg	Washington University In St. Louis	Class of 2017
Caroline Racine Belkoura	Washington university in st louis	Class of 2005
Kara Hom	Washington University in St. Louis	Class of 2019
Fiona Sloan	Washington University in St. Louis	Class of 2013
Sathya Sridharan	Washington University in St. Louis	Class of 2009
Shivani Desai	Washington University in St. Louis	Class of 2017
Ella Sudit	Washington Univeristy in St Louis	Class of 2019
Nancy Goth	MIZZOU	Class of Dec. 1975

AMERICAN OVERSIGHT

Celeste Bleiberg	Washington university in St. Louis	Class of 2019
Sara Baker	Washington University in Saint Louis	Class of 2012
Kendall Martinez-Wright	Lincoln University of Missouri	Class of 2020
Delaney Catlettstout	University of Missouri	Class of 2021
Luke Davis	University of Missouri - Columbia	Class of 2020
Mark Matousek	Washington University in St Louis	Class of 2016
Sofia Sanchez	Crowder College	Class of 2016
Olivia Hunt	University of Missouri Columbia	Class of 2020
Elizabeth Clark	Missouri Western university	Class of 2023
Andrea Waner	University of Missouri	Class of 2011 and 2020
Olliver Wilson	Ozarks Technical Community College	Class of 2021
Cort Gamblin	West Plains Senior High	Class of 2012
Jianan Almusawi	Missouri State University	Class of 2022
Victoria altic	Ozarks Technical Community College	Class of 2023
Maggie Morris-Owens	Missouri State University	Class of 2018
Ann Tilley	Washington University	MD class of 2001
Elizabeth Fuchs	University of Missouri St. Louis	Class of 2013
Katherine Weltha	Missouri Southern State University	Class of 2017
Maria Ruiz	Washington University in St. Louis	Class of 2017
Kathleen Fisher	Missouri State University	post graduate courses
Steph Perkins	Missouri State University	Class of 2008
Patricia	Tracy	Class of 1988
Neveen Ayesh	Southern Illinois university of Edwardsville	Class of 2020
Brian Connor	University of Missouri - Columbia	Class of 2004
Jennifer Suits	St. Louis U, Parkway South, Maryville University, Washinton U.	1982 HS Diploma, 1987 BA, 1990 JD, 2001 LLM
Samuel Schnabel	Washington University in St. Louis	Class of 2016
Cynthia Alimp	Vatterott College	Class of 2008
Sarah Pritchard	Washington University in St. Louis	Class of 2016
Machelle Warren	Missouri University of Science and Technology	Class of 2019
Carlissa Gilliam	University of Missouri, Missouri State University	Class of 1990, 2003
Lyra Noce	University of Missouri, Columbia	Class of 2006
Craig Gilliam	Missouri State University	Class of 1994

AMERICAN OVERSIGHT

Ronald Gregush	Washington University in St. Louis School of Medicine	Class of 2001
Maanasa Bandla	Washington University in St. Louis	Class of 2019
Nick Annin	Washington University in St. Louis	Class of 2017
Dana Sandweiss	St Louis University School of Law	Class of 1999
Lauren Averill	Washington University	Class of 2001
Emily Gallop Coen	Emily Gallop Coen	Class of 1996
Carolyn Petite	Washington University in St. Louis	1989 (BA) 1995 (JD)
Lucy Chin	Washington University in St. Louis	Class of 2017
Ruth Downs	Washington University In St. Louis , Brown School of Social Work	Class of 2007
Emily Gaumnitz	Washington University in St. Louis	Class of 2017
Michael Collins	Washington University in St. Louis	Class of 2018
Alex Le	Washington University in St. Louis	Class of 2021
Sophia Keskey	Washington University in St. Louis	Class of 2016
Jacob Noel	Washington University in St. Louis	Class of 2019
Sarah Turecamo	Washington University in St. Louis	Class of 2017
Jessie Kurz	Washington University in St. Louis	Class of 2018
Felice Segall	Washington University in St. Louis	Class of 2017
Paul Moiseyev	Washington University in St. Louis	Class of 2017
Ann Gocke	Washington University in St. Louis	Class of 2017
Samantha Katz	Washington University in St. Louis	Class of 2017
Ruvinee Senadheera	Washington University in St. Louis	Class of 2017
Haley Baker	Washington University in St. Louis	Class of 2016
Rachel Partridge	Washington University in St. Louis	Class of 2017
Samantha Breen	Washington University in St. Louis	Class of 2017
Daniel Meyerson	Washington University in St. Louis	Class of 2017
Claire Savage	Washington University in St. Louis	Class of 2017
Esther Cohen	University of Missouri - Columbia	Class of 1999
Satvik Reddy	Washington University In St Louis	Class of 2021
Gladys Pilz	Washington University in St Louis	Class of 1969
Maya Liran	Washington University in St. Louis	Class of 2015
Corey Salzer	Washington University In St. Louis	Class of 2017
Alexandra Barrett	Washington University in St. Louis	Class of 2017

AMERICAN OVERSIGHT

Kira Saks	Washington University in St. Louis	Class of 2017
Lauren Peffley	Washington University in St. Louis - Brown School of Social Work	Class of 2015
Holly Gulick	Missouri Southern State University	Class of 2018
Zach Kassman	Washington University in St. Louis	Class of 2020
Monica Sass	Washington University in St. Louis	Class of 2019
Hena Vadher	Washington University in St. Louis	Class of 2017
Sam Shonfeld	Washington University in St. Louis	Class of 2021
William Sieling	Washington University in Saint Louis	Class of 2016
Meghna Padmanabhan	Washington University in St. Louis	Class of 2021
Shelby Dickison	University of Missouri	BS Class of 2004/MD Class of 2011
Jonathan Hirshberg	University of Missouri Columbia School of Medicine	Class of 2014
Shayna Conner, MD, MSCI	University of Missouri-Columbia	Class of 2008
Mary Keegan	University of Missouri Columbia School of Medicine	Class of 2010
Helen Fox	Washington University in St. Louis	Class of 2019
Alison Leslie	Washington University in St. Louis	Class of 2017
Meryl Sundy	University of Missouri	Class of 2014
Bianca Jyotishi	Washington University in St. Louis	Class of 2019
Libby Trammell	Washington University in St. Louis	Class of 2019
Anna Bartels-Newton	Washington University in St. Louis, George Warren Brown School of Social Work	Class of 2020
Sally Rifkin	Washington University in St. Louis	Class of 2018
Sheree Hickman	Washington University in St. Louis, Brown School	Class of 2019
Ben Feigenbaum	Washington University in St. Louis	Class of 2019
Kristen Beatty	Washington University in St. Louis	Class of 2019
Claudia Noto	Washington University in St. Louis	Class of 2018
Georgia Bartels-Newton	Washington University in St. Louis	Class of 2021
Melanie Marcille	Washington University in St. Louis	Class of 2018
Zachary Romo	Washington University in St. Louis	Class of 2014
Stacey Bayer	The Brown School of Social Work at Washington University	Class of 2020
Katherine Chew	Washington University in St. Louis	Class of 2017, class of 2019

AMERICAN OVERSIGHT

Elizabeth Schmidt	Washington University in St. Louis	Class of 2015/2019
Purti Pareek	Washington University School of Law	Class of 2019
Dormie Ko	Washington University in St. Louis	Class of 2019
Melanie Cohen	Washington University in St. Louis	Class of 2017
Eric Freeman	Washington University in St. Louis	Class of 2019
Maya Sorini	Washington U in St. Louis	Class of 2018
Marissa Bohrer	Washington University in St. Louis	A.B., Class of 2014; MSW, Class of 2019
Mindy Resnick	University of Missouri- Columbia	Class of 2004
Swetha Nakshatri	Washington University in St. Louis	Class of 2020
Logan Phillips	Washington University in St. Louis	Class of 2021
Reuben Hogan	Washington University of Saint Louis	Class of 2018
Amar Karahodzic	Washington University in St. Louis	Class of 2019
Anne brown	University of Missouri-St. Louis	Class of 2021
Sarah Yapo	Washington University in St. Louis	Class of 2019
Kayce Sorbello	Washington University in St. Louis	Class of 2019
Landon Krantz	University of Missouri—Columbia	Class of 2014
Tony Bell	University of Missouri	Class of 2016
Shamilka Seneviratne	Washington University in St. Louis	Class of 2019
Anand Chukka	Washington University in St. Louis	Class of 2019
Jack Radley	Washington University in St. Louis	Class of 2019
Tess Hankin	Washington University in St. Louis	Class of 2020
Samantha Elster	Washington University in St. Louis	Class of 2020
Matthew	Grossman	Class of 2020
Sabrina Tannehill	Washington University in St Louis	Class of 2019
Natalia Molinatti	Washington University in St. Louis	Class of 2019
Chace	Conroy	Class of 2016
Kriti Prasad	Washington University in St. Louis	Class of 2017
Isabelle Adams	Washington University in St. Louis	Class of 2016
Maggie Harr	Maggie Harr	Class of 2000
Sydney Woods	Washington University in St. Louis	Class of 2018
Alexander Berezin	Washington University in St. Louis	Class of 2018
Ryan Welish	Washington University in St Louis	Class of 2019

AMERICAN OVERSIGHT

Jenny Tallering	Washington University in St. Louis	Class of 2020
Hanna Colin	Washington University in St. Louis	Class of 2014
Katelyn Taira	Washington University in St. Louis	Class of 2018
Haley Eagle	Washington University in St. Louis	Class of 2019
Amanda Drath	Washington University in St. Louis	Class of 2019
Anne Coulomb	Washington University in St. Louis	Class of 2019
Theanne Liu	Washington University in St. Louis	JD/MSW Class of 2020
Morgen Seim	Washington University School of Law in St Louis	Class of 2021
Meredith Davis	Washington University in St . Louis	Class of 2017
Elisabeth Marsh	Catholic University of America	Class of 2008
Roxy Ackerman	Washington University in St. Louis	Class of 2020
Monika Pawar	Washington University in St. Louis	Class of 2016
Sophie Revere	Washington University in St. Louis	Class of 2015
Talia Weine	Washington University in St. Louis	Class of 2021
Emily Gleason	Washington University in St. Louis	Class of 2019
Jacob Maddox	Washington University of St. Louis	Class of 2018
Schuyler Atkins	Washington University in St. Louis	Class of 2016
Allyson Richman	Washington University a School of Law	Class of 2021
Madeleine Seibold	Washington University in St. Louis	Class of 2019
Mark Buhrmester	University of Missouri - Columbia	Class of 2008
Lara Rix	Washington University in St. Louis	Class of 2021
Nicole Lynch	Missouri State University	Class of 2016
Ashna Vasa	Washington University in St. Louis	Class of 2018
Nathan Hopkins	University of Missouri	Class of 2011
Jessica Dyer	Washington University in St. Louis	Class of 2006
Hannah Lacava	Washington University in St. Louis	Class of 2017

AMERICAN OVERSIGHT

Mark R. Reading and Bret Fischer provided the following information:

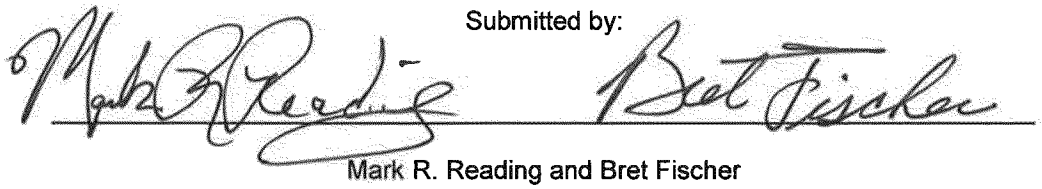
AMERICAN OVERSIGHT

RECEIVED

JUN 07 2019

STATE AUDITORS OFFICE

Submitted by:



Mark R. Reading and Bret Fischer
Jefferson City, MO 65109
(573) 694-6828
Primary Contact Person

Referendum Petition 2020-R001
Relating to HB 126 related to abortion passed by Missouri General Assembly in 2019 session
The materials are being submitted in support of qualification of the measure, but in opposition to passage.

Proposed Statement of Fiscal Impact

Fiscal Impact Information Submitted Pursuant to Section 116.175, RSMo.

The proposed legislation will result in an estimated loss of $6.16 billion in state and local revenue, including $5.2 million lost in state general revenue, $596,695 lost in state dedicated funds, $4 million lost in local funds, and $6.16 billion lost in federal funds.

ESTIMATED NET EFFECT ON STATE FUNDS		
Fund Affected	**FY 2021**	**FY 2022**
General Revenue	($3,811,195)	($5,211,195)
Other State Dedicated Funds	($596,695)	($596,695)
Total Estimated Net Effect on All State Funds	($4,407,890)	($5,807,890)
ESTIMATED NET EFFECT ON LOCAL FUNDS		
Local Funds	($4,020,542)	($4,020,542)
Total Estimated Net Effect on All Local Funds	($4,020,542)	($4,020,542)
ESTIMATED NET EFFECT ON FEDERAL FUNDS		
Federal Funds	($6,152,760,664)	($6,152,760,664)
Total Estimated Net Effect on Federal Funds	($6,152,760,664)	($6,152,760,664)
Total All Funds	($6,161,189,096)	($6,162,589,086)

AMERICAN OVERSIGHT

Introduction

HB 126 passed by the General Assembly and signed by Governor Parson makes a variety of changes to the state's laws on abortion, pregnancy resource centers, parental notification, and state regulations. These provisions have a dramatic impact on women's human rights, privacy rights, reproductive rights, and women's health.

The fiscal note prepared by the General Assembly's Oversight Division was prepared in haste and did not allow it to provide for thoughtful analysis and fiscal estimates by state agencies and the other entities that the division normally reaches out to for comment. The Oversight Division's fiscal note, in an exceptionally unusual preface to its work, states:

> ***"Due to time constraints of less than 1 hour, Oversight was unable to receive some of the agency responses in a timely manner and performed limited analysis.*** *Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note."* (emphasis added)

As of June 7, 2019, the Division continues to show the hurried fiscal note as its current estimate, so it appears unlikely that the Division will update this fiscal note. This fiscal submission will go into detail on a variety of topics not addressed by the Oversight Division. Table 1 provides a list of the areas that may result in an economic impact to the state. It shows the local and state taxes that would be affected by changes in economic activity related to the legislation. The table also includes a list of the agencies of state and local government that could need additional resources due to making illegal an activity that was previously legal. Most of these items have already been identified in the press as issues as the result of the recently passed abortion legislation passed in Missouri, Alabama, and Georgia. Many have also been identified during the travails faced by Indiana and North Carolina when their legislatures passed controversial bills on social issues.

The analysis will focus on the top issues on the list given the short deadline required by the Auditor's office for submission of fiscal note analysis. The possible issues have been identified by reviewing press coverage of recent controversial legislation over the past few years and cover a wide range of different topics.

AMERICAN OVERSIGHT

Table 1 - Abortion - Possible Areas of Lost Economic Activity

	Local		Local surtaxes or fees				State			
Type of activity	Income Tax (St. Louis/KC earnings tax)	Sales Tax	Hotels	Auto rentals	Convention center	Other tourism taxes	Income tax	Sales Tax	Corporate Tax	Athletes & Entertainers
Loss of Medicaid as indicated in fiscal note for HB 126	X	X					X	X	X	
Loss of expansions of companies – Marquee expansions such as being considered by General Motors in Wentzville	X	X					X	X	X	
Loss of arts and entertainers - i.e. concerts, plays, film productions, etc.		X	X	X	X	X				X
Loss of sports events – NCAA and other amateur events – example NCAA (North Carolina), St. Louis NCAA men's basketball regional (2020), U.S. Women's Team Soccer in St. Louis (2019)		X	X	X	X	X				X
Loss of conventions	X	X	X	X	X	X	X	X	X	
General reduction in tourism	X	X	X	X	X	X	X	X	X	
Boycott of Missouri businesses - Enterprise Rent-A-Car, Edward D. Jones, Anheuser Busch, Monsanto, Panera Bread, Purina, etc.	X	X					X	X	X	
Boycott of Missouri businesses by pension systems in other states	X	X					X	X	X	
Boycott of state and local bond issues resulting in higher interest rates paid										
Business loss to major Research Medical Centers - BJC, Stowers Center, etc.	X	X					X	X	X	
Other states boycotting state employee travel to Missouri	X	X	X	X	X	X		X		
Loss of current companies – examples are Indiana (LGBT) and NC (bathrooms)	X	X					X	X	X	

AMERICAN OVERSIGHT

Abortion - Possible Areas of Lost Economic Activity (continued)

	Local		Local surtaxes or fees				State			
Type of activity	Income Tax (St. Louis/KC earnings tax)	Sales Tax	Hotels	Auto rentals	Convention center	Other tourism taxes	Income tax	Sales Tax	Corporate Tax	Athletes & Entertainers
Donors to universities – Alabama example (loss of grants/students/etc.)	X	X					X	X		
Higher Education - withdrawal of students or decrease in attendance	X	X					X	X		
	Local Cost		**State General Revenue cost**							
Increase in budgets for agencies as a result of making something illegal that had previously been legal										
Local agencies										
Local Prosecutors	X									
Local law enforcement	X									
State agencies										
Public Defender			X							
Judiciary			X							
Corrections			X							
Attorney General			X							

AMERICAN OVERSIGHT

Table 2 - Summary of Estimated Effect of HB 126

Page #	Table #	Type of activity	FY 2021	FY 2022
9-10	Table 3	Loss of Medicaid as indicated in fiscal note for HB 126	($6,152,760,664)	($6,152,760,664)
8		Loss of Marquee expansions of companies such as General Motors expansion at Wentzville	TBD	TBD
10-11	Table 4	Loss of arts and entertainers - i.e. concerts, plays, film productions, etc.	($4,480,500) including ($2,349,900) General Revenue and ($2,130,600) local funds	($4,480,500) including ($2,349,900) General Revenue and ($2,130,600) local funds
11		Pregnancy Resource Center Tax Credit	$0	($1,400,000) and will grow to ($4,900,000) or more in FY 2026
12-13	Tables 5 and 6	Loss of sports events – NCAA and other amateur events – example NCAA (North Carolina), St. Louis NCAA men's basketball regional (2020), U.S. Women's Team Soccer in St. Louis (2019)	($3,947,932) including ($1,461,295) General Revenue and ($596,696) in state dedicated sales taxes and ($1,889,942) local funds	($3,947,932) including ($1,461,295) General Revenue and ($596,696) in state dedicated sales taxes and ($1,889,942) local funds
		Loss of conventions	TBD	TBD
		General reduction in tourism	TBD	TBD
		Boycott of Missouri businesses - Enterprise Rent-A-Car, Edward D. Jones, Anheuser Busch, Monsanto, Panera Bread, Purina, etc.	TBD	TBD
		Boycott of Missouri businesses by pension systems in other states	TBD	TBD
		Boycott of state and local bond issues resulting in higher interest rates paid	TBD	TBD
		Business loss to major Research Medical Centers - BJC, Stowers Center, etc.	TBD	TBD
		Other states boycotting state employee travel to Missouri	TBD	TBD
		Loss of current companies – examples are Indiana (LGBT) and NC (bathrooms)	TBD	TBD
		Donors to universities – Alabama example (loss of grants/students/etc.)	TBD	TBD

AMERICAN OVERSIGHT

		Higher Education - withdrawal of students or decrease in attendance	TBD	TBD
		Total loss of funds	($6,161,189,096)	($6,162,589,096)
		GR	($3,811,195)	($5,211,195)
		Other state funds	($596,695)	($596,695)
		Local funds	($4,020,542)	($4,020,542)
		Federal Funds	($6,152,760,664)	($6,152,760,664)
		Budget increases		
		Local agencies		
		Local Prosecutors	TBD	TBD
		Local law enforcement	TBD	TBD
		subtotal	TBD	TBD
		State agencies		
		Public Defender	TBD	TBD
		Judiciary	TBD	TBD
		Corrections	TBD	TBD
		Attorney General	TBD	TBD
		subtotal	TBD	TBD
		Total	TBD	TBD

AMERICAN OVERSIGHT

Overview of Reasons to Consider Various Issues as part of Abortion Fiscal Analysis

Medicaid summary

Most important, the Legislative Oversight Division failed to include in its summary page the largest cost item related to the bill – the loss of federal Medicaid funds. This issue is referenced in the text of the fiscal note but not included in the summary which in effect helped its passage by keeping the state cost down.

Medicaid is the single largest program in the entire state budget, consisting of approximately $11.2 billion in the FY-2020 budget, spread principally among three state departments. That amount includes approximately $6.2 billion federal funds. Any legitimate, responsible fiscal note should properly reflect the full cost of the legislation up to the amount possible under current state and federal laws. The Department of Social Services indicates that HB 126 violates the Hyde amendment in federal law with total loss of federal funds possible as a result.

Losing a portion or all of the federal funds would significantly and negatively impact Missourians. Medicaid funding provides a core funding component for hospitals, nursing homes, mental health facilities, prescription drugs and other services relied upon by nearly one million Missourians. Without such funding the state would have to pass a large tax increase to replace the lost federal funds to pay for the services or radically reduce the services available. Hospitals and nursing homes would be dramatically affected by loss of the federal funds, with some closing their doors. Health outcomes for the state's population would worsen. The loss of $6.2 billion in federal funds would result in the loss of employment and services that would multiply many times over in the loss of income, sales, and corporate tax revenues.

Boycott history summary

The Oversight Division also does not evaluate the possible impact of boycotts and other social pressure that would reduce economic activity and state revenue. Hard wedge social issues have a history of creating negative economic impact in states that pass related legislation. The two best examples are Indiana (2015) and North Carolina (2016), which faced serious boycotts and blowback after passing such legislation. Despite the very recent history of the well-documented threats and actual economic harm, the Oversight Division does not even mention or consider the possibility that HB 126 might have similar consequences. This despite the growing list of corporations, organizations, and people speaking out about the problems with recent abortion legislation passed in Missouri, Alabama, and Georgia. This also despite the fact that protests on race, workplace benefits, and campus leadership at the University of Missouri (2015)[i] led to significant student loss, reduced donations, loss of economic activity in Columbia, etc. Each of these examples shows that turmoil leads to economic loss and should be considered in an economic analysis.

Indiana passed a Religious Freedom Restoration Act[ii] in 2015. Indiana was forced to repeal and make significant changes because of the immediate economic threats levied through protests and by corporations and organizations against the state. Nine CEOs called for legislation to protect against discrimination, including Salesforce marketing, Anthem, Angie's List, Eli Lilly and Company, and Roche Diagnostics. The NBA, WBNA, and their Indiana-based teams did the same. U.S. Track and Field expressed deep concern. Angie's List threatened to cancel a $40 million expansion to its Indianapolis based headquarters. Salesforce announced it would cancel all programs that required customers or employees to travel to Indiana. Many other companies, politicians, and organizations raised their voices against the bill. In the face of this pressure, Indiana relented and passed changes to forestall major economic loss to the state.

North Carolina passed a Public Facilities Privacy and Security Act[iii] in 2016. The Wikipedia article footnoted indicates that North Carolina's economy lost over $400 million in investment and jobs. However, reporting at the time by the Associated Press indicated a cost of $3.8 billion[iv] including over 2,900 jobs by companies that cancelled projects - PayPal 400 job project, Deutsche Bank 250 job project, Adidas 160 job shoe factory, Voxpro hundreds of customer support workers, and CoStar 700 jobs. In addition, in 2016 the NCAA stripped the state of seven events including the men's championship

AMERICAN OVERSIGHT

basketball event and indicated it would not receive any additional events through at least 2022 unless the bill was repealed. The Atlantic Coast Conference also moved events to neutral sites outside of North Carolina. The NBA also moved its All-Star game out of the state to New Orleans.

Despite these examples, the Oversight Division did not mention this possibility in the fiscal note. In each of the examples a sizable number of businesses staked out a position and many consumers have expected them to take such a position. Some possible boycotts on Missouri have already been reported[v] including companies such as Anheuser Busch, Enterprise Rent-A-Car, Panera Bread, Edward Jones, and Purina pet food. As litigation proceeds on HB 126, the calls and list of boycott suggestions will likely increase.

Marquee business expansions

As noted above, Indiana and North Carolina were faced with losing major business expansions as a result of passing controversial legislation. A major focus of the past legislative session was passing legislation to provide tax credits for General Motors for expansion at the Wentzville auto plant. General Motors will have to decide whether HB 126 is important to its expansion plans or factors into its equation when considering other suitors. However, the General Motors vision[vi] includes Driving Social Impact and Diversity which are commitments to finding women and minorities for employment and investing in women for leadership positions. HB 126 would seem to make it more difficult for GM to recruit women for Missouri jobs at all levels. The possible GM expansion is an example of the type of expansions that North Carolina lost. This fiscal note does not include any estimate for business expansion loss at this time because the bill just passed and no known business has announced concerns at this point.

Polls summary

The effectiveness of boycotts or other economic action is dependent upon the public's opinion about the issue. Overwhelming public opposition to the Indiana and North Carolina laws led to repeal of the legislation.

Polling on the issue of abortion and women's rights is also strong. Four recent polls by Gallup, Morning Consult, CBS News, HuffPost/YouGov show that most Americans do not support the abortion bills passed by Missouri, Alabama, Georgia, and Ohio.

- https://news.gallup.com/opinion/gallup/257627/alabama-bill-odds-public-consensus-abortion.aspx
- https://www.cbsnews.com/news/majority-of-americans-dont-want-roe-v-wade-overturned-cbs-news-poll-finds/
- https://morningconsult.com/2019/05/22/most-voters-oppose-abortion-laws-enacted-alabama-georgia/
- https://www.huffpost.com/entry/alabama-abortion-law-poll_n_5cdee283e4b00e035b8f7452
- https://www.vox.com/2019/5/22/18635563/poll-alabama-abortion-ban-law-democrats-republicans-2020

CBS News

- 67% want Roe v. Wade left in place, including 69% of women and 65% of men.
- Twice as many people would be angry about Roe v. Wade being overturned than happy or satisfied.
- While views divide along partisan lines, Republicans are split on overturning Roe v. Wade, with 45% saying keep it as is and 48% preferring its overturn.

Gallup

- 83% in support of abortion if woman's life endangered.
- 77% in support of abortion if the result of rape or incest.

AMERICAN OVERSIGHT

HuffPost/YouGuv

- 57% disapprove of Alabama's law compared to 31% support.
- 50% approve of legal abortion in all or most cases compared to 37% that want abortion illegal in all or most cases.

Morning Consult

- 56% disapprove of states passing laws like those in Alabama and Georgia - similar to HuffPost/YouGov poll.
- 45% of Republicans think abortion should be legal in cases of rape, incest, or when a mother's life is in danger – similar to CBS News poll.

Loss of federal Medicaid funding

The largest possible impact on the Missouri economy as a result of the passage of HB 126 is the possible complete loss of federal funds for the state Medicaid program. The final fiscal note for HB 126 filed by the legislature's Oversight Division indicates that the state Department of Social Services reported that full funding for the Medicaid program could be lost under current federal law. The Oversight Division's fiscal note cover page summary indicates that the state loss could be more than $4.9 million as a result of passage. That is a substantial understatement of the amount of the loss which is further explained in the fiscal note's text. The $4.9 million Oversight Division fiscal note basically only reflects the cost of the pregnancy resource center tax credit and completely ignores the possible Medicaid funding loss. Medicaid is the single largest program in the entire state budget, consisting of approximately $11.2 billion in the FY-2020 budget spread principally among three state departments. That amount includes approximately $6.2 billion federal funds. Any legitimate, responsible fiscal note must properly reflect the full cost of the legislation up to the amount possible under current state and federal laws.

Federal law known as the Hyde Amendment (a "rider" to the Congressional appropriations bill for the Department of Health and Human Services renewed each year since 1981) restricts the ability of states to use federal funds to pay for abortions for Medicaid recipients except in remarkably narrow instances—where the pregnancy resulted from rape or incest and when necessary to save the life of the mother. The Missouri Department of Social Services has paid for abortions in such cases previously, using federal Medicaid funding pursuant to provisions of the Hyde Amendment. HB 126 prohibits abortions in Missouri in cases of rape or incest at eight weeks gestational age or later. Thus, it clearly violates provisions of federal law under the Hyde Amendment. That violation jeopardizes all federal Medicaid funding received by Missouri ($6.2 billion).

Losing a portion or all of the federal Medicaid funds would significantly and negatively impact Missourians, nearly one million of whom rely on the program for critical health care services. Medicaid funding provides a core funding component for hospitals, nursing homes, and mental health facilities. It is also a core component of funding prescriptions and other services. Without such funding the state would have to pass a large tax increase to replace the lost federal funds to pay for the services or radically reduce the services available. Without the federal funds hospitals and nursing homes would be dramatically affected, with some closing their doors. Health outcomes for Missourians would worsen.

The loss of all Medicaid funding would decimate the Missouri economy and health care for Missouri citizens. In addition to the loss of $6.2 billion in federal funds, the loss of employment and services would multiply many times over in the loss of income, sales, and corporate taxes. For the purposes of this fiscal note, we are including only the loss of federal funds in our estimate (not the massive multiplier effects).

It is critical to understand the human cost involved in such an ill-conceived measure as HB 126—and in particular, the impact on women's health. As the Missouri Foundation for Health stated regarding HB 126, "This law is just the latest action that flies in the face of a preponderance of evidence, conflicts with widespread consensus among health professionals, and will, in fact, be harmful, not helpful to women's health overall."

AMERICAN OVERSIGHT

An evidence-based, scientific approach to women's health has led to great improvements in the health of women in states that have adopted such measures. However, when governments employ heavy-handed schemes like HB 126 to limit women's access to reproductive health services, women's health suffers (maternal mortality rates rise, cases of HIV increase, etc.). This is particularly problematic for Missouri because the health of Missouri women already significantly lags women's health nationally. The Missouri Foundation for Health reports that Missouri ranked 50th in 2018 in health outcomes for women, down from 43rd in 2016; and that in 2018, Missouri ranked 42nd in maternal mortality with a mortality rate of 32.6 per 100,000 (up 14 percent since 2016) compared to a national average of 20.2. So already poor health outcomes for Missouri women are getting worse. Tragically, Missouri's response was to pass a measure that will further restrict women's access to reproductive health services and thereby accelerate the decline in women's health.

Table 3 is an excerpt of the Medicaid funding table included in the Governor's Executive Budget[vii] (page 11-18) for FY 2020 showing the Governor recommended $6.2 billion in federal funds for the program. The fiscal analysis reflects the loss of the full amount because it reflects current federal law[viii].

Table 3 - Medicaid Funding in State Budget

	FY 2019 Appropriation	FY 2020 Governor Recommended
General Revenue	$2,073,734,533	$2,390,252,752
Federal Funds	$5,833,111,912	$6,152,760,664
Other Funds	$2,668,355,622	$2,664,344,600
Total	$10,575,202,067	$11,207,358,016

Arts and Culture

Nonprofit arts and cultural organizations make their communities more desirable places to live and work. They also power the state's economy by creating jobs and driving consumer and business spending, which generates significant state and local government revenue.

An extensive 2015 nationwide economic impact analysis—Arts & Economic Prosperity 5: the Economic Impact of Nonprofit Arts & Cultural Organizations & Their Audiences by Americans for the Arts—evaluated this impact. The Missouri Arts Council commissioned a Missouri-specific version of this nationwide study. The study determined:

- The arts and culture industry in Missouri generated $1.039 billion in total statewide economic activity in FY2015.
- That amount includes both $602.9 million spent by organizations that employed people locally, bought goods and services from local businesses, and attracted tourists; and $436.1 million in additional spending by audiences pumped revenue into restaurants, hotels, retail stores, parking garages, and other local businesses.
- The combined spending by organizations and audiences supported 31,925 full-time equivalent jobs, created $805.6 million in household income for local residents, and delivered $89.6 million in revenue to local ($42.6 million) and state ($47.0 million) governments.

According to the study, more than 21.4 million people attended arts and culture events produced by 491 Missouri organizations in FY2015. Generally speaking, the arts community has strongly supported progressive government policies and vigorously opposed draconian measures such as HB 126. High-profile actors, directors, musicians, etc., have made headlines opposing measures such as the North Carolina bathroom bill and the Indiana bill that sought to discriminate against the LGBT community. Therefore, it seems likely that at least some arts community personages will refuse to perform in Missouri in response to passage of HB 126. Similarly, it appears likely that many arts-minded attendees will opt to

AMERICAN OVERSIGHT

avoid Missouri performances; instead traveling to other states with less repressive laws. Given the figures derived from the Missouri Arts Council study, even a small decrease in economic activity tied to the arts and cultural organizations would mean a significant blow to the Missouri economy. The table below calculates the loss in state and local tax revenue assuming a reduction in arts/culture economic activity of 1.0%, 2.5% and 5.0%. We recommend the 5.0% option for the following reasons:

1. It is important to note that the figures referenced above from the 2015 Missouri Arts Council study do not include the economic impact of for-profit arts and culture organizations. Therefore, spending by for-profit arts and entertainment organizations and venues, such as the Fox Theatre in St. Louis, is not included. Such economic activity is likely to be as big as or bigger than that of the nonprofit entities and was not included simply because no similar study of for profit arts/cultural economic impact in Missouri was available. Thus, the economic loss to the state and local governments would be substantially higher if the for-profit entities were taken into account.

2. The data from the FY2015 study has not been multiplied to account for inflation in the years since 2015, which tends to understate the impact of the potential loss to the state and local governments.

Table 4 - Reduction in Arts/Culture economic activity

		1.0% reduction	2.5% reduction	5.0% reduction
State tax revenue	$46,998,000	$469,980	$1,174,950	$2,349,900
Local tax revenue	$42,612,000	$426,120	$1,065,300	$2,130,600
Overall loss	$89,610,000	$896,100	$2,240,250	$4,480,500

Pregnancy Resource Center Tax Credit

Four significant changes related to the pregnancy resource center tax credit were created by HB 126.

- The definition of a pregnancy resource center is modified to include facilities that provide assistance to women and families with crisis pregnancies or unplanned pregnancies by offering services specified in the bill and services provided under the Missouri Alternatives to Abortion Services Program.
- The tax credit that may be claimed is increased from 50 percent of the amount contributed to 70 percent beginning in tax year 2021.
- The $3.5 million cap on the amount of tax credits that may be claimed annually is removed in Fiscal Year 2022.
- The December 31, 2024 sunset provision on the program is eliminated.

While it is difficult to estimate the fiscal impact of the definitional change, it is clear that the remaining three provisions are likely to significantly increase state costs. Even if donations to pregnancy resource centers remain the same, the cost to the state for tax credits will increase markedly due to raising the credit from 50 to 70 percent of the amount contributed. That results in a $1.4 million FY-22 cost to the state as reported by the Oversight Division in its fiscal note for HB 126.

Removing the cap on the amount of tax credits will result in much greater costs to the state. Those costs are effectively inestimable because there will be no limit on the amount of credits that can be claimed. The only check on the amount of credits will be the amount of eligible contributions made to pregnancy resource centers. Therefore, that cost is unknown but potentially highly significant.

Eliminating the sunset on the amount of tax credits will cost the state at least $3.5 million annually beginning in FY-26 (also as reported by Oversight). Therefore, the total cost to the state will be $4.9 million to unknown.

AMERICAN OVERSIGHT

Sporting events and conventions

Missouri is in much the same situation as North Carolina was in 2016-2017 in terms of sporting events. There are eight NCAA events scheduled from 2019 to 2022. The NCAA stripped North Carolina of seven events. The NHL All-Star Game is scheduled in St. Louis. The NBA moved its All-Star game from North Carolina in response to passage of the Public Facilities Privacy and Security Act in 2016.

In addition, US Gymnastics will have its annual championship in Kansas City in 2019 and its Olympic Trials in 2020. Given the tremendous sadness associated with widely reported abuse suffered by the women's gymnastics team members, it would seem that there will be calls by athletes and others to boycott at least their portion of the event in hopes of having it moved elsewhere.

The events include:

Kansas City events

- 2019 U.S. Gymnastics Championships – August 8-11, 2019 - Sprint Center

St. Louis events

- 2020 NHL All-Star Game - January 24-26, 2020 - Enterprise Center
- 2020 Missouri Valley Conference Men's Basketball Tournament - March 5-8, 2020 - Enterprise Center
- 2020 NCAA Men's Basketball Championship First/Second Rounds - March 19 & 21, 2020 - Enterprise Center
- 2020 NCAA Division II Spring Festival - May 10-16, 2020 - Lindenwood University / Dwight Davis Memorial Tennis Center
- 2020 NCAA Division III Men's & Women's Tennis Championships - May 18-23, 2020 - Dwight Davis Memorial Tennis Center
- 2020 U.S. Olympic Team Trials - Gymnastics - June 25-28, 2020 - Enterprise Center
- 2021 NCAA Division I Wrestling Championships - March 18-20, 2021 - Enterprise Center
- 2021 NCAA Division III Women's Volleyball Championship - November 18-20, 2021 - Washington University Field House
- 2022 NCAA Division II Wrestling Championships - March 11-12, 2022 - Chaifetz Arena
- 2022 NCAA Division II Women's Lacrosse Championship - May 20-22, 2022 - Harlen C. Hunter Stadium

The NCAA may not move all of its events to another location outside Missouri. Other sponsors will use their own criteria and judgement to determine whether to proceed with their events. However, data exists for the economic impact of one of the NCAA events to help put into perspective the loss of a single event. In 2020 St. Louis will host the NCAA Men's Basketball tournament first and second round games at the Enterprise Center. Multiple events on the above list are held at the Enterprise Center or at venues of a similar size.

Table 5 shows the economic estimate as reported in the local press for seven of the eight venues that hosted the same men's basketball rounds in 2019. The number of seats shown is the basketball configuration seat number as reported in Wikipedia. The average economic impact per seat for the seven venues is $443. That average economic impact would compute to $9.7 million in economic activity in St. Louis for this event.

AMERICAN OVERSIGHT

Table 5 - Estimated Economic Impact of 2020 NCAA Men's Basketball Tournament at Enterprise Center

City	Stadium/Arena	Seats	Economic Impact	Economic Impact per seat
Hartford, CT	XL Center	16,294	$7,700,000	$473
Salt Lake City, UT	Vivint Smart Home Arena	18,306	$5,500,000	$300
Des Moines, IA	Wells Fargo Arena	16,110	$6,000,000	$372
Jacksonville, FL	Jacksonville Veterans Memorial Arena	14,091	$10,000,000	$710
Tulsa, OK	BOK Center	17,839	$9,000,000	$505
Columbus, OH	Nationwide Arena	19,500	$6,000,000	$308
Columbia, SC	Colonial Life Arena	18,000	$9,000,000	$500
San Jose, CA	SAP Center	18,543	N/A	N/A
	Total without San Jose	120,140	$53,200,000	$443
St. Louis estimate	Enterprise Center	22,000	$9,741,968	$443

Table 6 estimates the state and local tax loss for a loss of a single sporting event the size of the NCAA Men's basketball Tournament games in St. Louis. Assuming the sales tax is applied to the entire economic activity, and not including a calculation for individual income taxes, the cancellation of a single event would cost the state $411,598. In the past the Oversight Division has used a statewide local sales tax estimate of 3.88% for its fiscal notes, although the major event areas often are higher. This fiscal note assumes the 3.88% for a total loss of $377,988 in local sales taxes.

This fiscal note assumes the loss of five events statewide the size of the 2020 basketball event. This assumption is made because no additional estimate of loss is included in the analysis for a general tourism decrease. Even a small reduction in the rate of growth of general tourism would be greater than the $3.9 million state and local tax loss assumed. The 2018 Annual Report of the St. Louis Convention Center highlights[ix] 19 of the roughly 100 conventions it reports each year. The total rooms booked for those conventions is 20,490 rooms booked. That is higher than the number of rooms booked reported in the cities that hosted the same round of basketball in 2019. In addition, the estimate does not include any estimate of local convention surtaxes or fees. The estimate is therefore quite conservative.

Table 6 - Estimated loss to State and Local Funds for 1 event

	1 event	5 events
Economic Activity lost	($9,741,968)	($48,709,839)
State Sales tax		
GR (3%)	($292,259)	($1,461,295)
Dedicated taxes (1.225%)	($119,339)	($596,696)
subtotal state taxes	($411,598)	($2,057,991)
Local Sales tax (3.88%)	($377,988)	($1,889,942)
Total loss	($789,586)	($3,947,932)

AMERICAN OVERSIGHT

Reference footnotes

[i] Wikipedia background: https://en.wikipedia.org/wiki/2015%E2%80%9316_University_of_Missouri_protests

[ii] Wikipedia background: https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act_(Indiana)

[iii] Wikipedia background: https://en.wikipedia.org/wiki/Public_Facilities_Privacy_%26_Security_Act

[iv] Associated Press: https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html

[v] Boycotts to Missouri and other states: https://wjla.com/news/nation-world/calls-to-boycott-alabama-georgia-missouri-over-restrictive-abortion-laws

[vi] General Motors Vision Statement 2017 on corporate website: https://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2018/jun/0612-sustainability.html

[vii] State of Missouri: Executive Budget for FY 2020: https://oa.mo.gov/sites/default/files/FY_2020_EB_Social_Services.pdf

[viii] Should the federal government not penalize the state for the entire amount of Medicaid, even a small percentage reduction to the Medicaid federal funds could have a substantial amount of impact, especially if it is targeted to women's health care.

[ix] St. Louis Convention and Visitors Commission 2018 Annual Report: https://explorestlouis.com/wp-content/uploads/2018/09/Annual-Report-2018.pdf

AMERICAN OVERSIGHT

Kip Kendrick, State Representative, District 45, Ranking Member House Budget Committee provided the following information:

AMERICAN OVERSIGHT

CAPITOL OFFICE
201 West Capitol Avenue
Room 101B
Jefferson City, MO 65101-6806
(573) 751-4189
kip.kendrick@house.mo.gov

COMMITTEES:
Budget
Ethics
Higher Education
Subcommittee on Appropriations-Education
Special Committee on Government Oversight

KIP KENDRICK
State Representative
District 45

RECEIVED
JUN 12 2019
STATE AUDITOR'S OFFICE

June 12, 2019

Dear Auditor Galloway:

I write to request that, in any fiscal note you prepare for any proposed petition pertaining to HB 126, your office incorporates the information and considerations contained in the fiscal note prepared for the final version of that legislation. For your reference, this fiscal note was identified for the General Assembly with reference number L.R. No. 0461-18. This fiscal note reflects the understanding and agreement of the General Assembly of the estimated impact of this bill upon the state budget at the time HB 126 was Truly Agreed To and Finally Passed. A copy of L.R. No. 0461-18 is attached for your reference.

Sincerely,

Kip Kendrick
State Representative, District 45
Ranking Member House Budget Committee

AMERICAN OVERSIGHT

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0461-18
Bill No.: SS for SCS for HB 126
Subject: Abortion
Type: Original
Date: May 16, 2019

Bill Summary: This proposal requires the use of a fetal heartbeat detection test prior to an abortion and prohibits an abortion is a fetal heartbeat is detected.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	$0	$0	(Could exceed $1,400,000)	(Could exceed $4,900,000)
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**(Could exceed $1,400,000)**	**(Could exceed $4,900,000)**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 14 pages.

AMERICAN OVERSIGHT

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Federal	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
Total Estimated Net Effect on All Federal Funds	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Total Estimated Net Effect on FTE	**0**	**0**	**0**	**0**

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Local Government	**$0**	**$0**	**$0**	**$0**

AMERICAN OVERSIGHT

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints of less than 1 hour, **Oversight** was unable to receive some of the agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

§135.630 Pregnancy Resource Center Tax Credit

Oversight notes according to the Tax Credit Analysis submitted by the Department of Social Services regarding this program, the Pregnancy Resource Center tax credit program had the following activity;

	FY 2016	FY 20167	FY 2018	FY 2019 (projected)	FY 2020 (projected)
Certificates Issued	4,363	4,628	4,416	4,400	5,400
Amount Authorized	$2,499,442	$2,443,386	$2,499,394	$2,500,000	$3,500,000
Amount Issued	$2,499,442	$2,443,386	$2,499,394	$2,500,000	$3,500,000
Amount Redeemed	$1,845,875	$2,183,505	$2,094,375	$2,000,000	$3,000,000

Amount Outstanding - $2,346,957 Amount Authorized but Unissued - 0

Oversight notes the pregnancy resource center tax credit program currently has a $2.5 million annual cap. The cap is scheduled to increase to $3.5 million starting July 1, 2019. Also, if the amount of tax credits redeemed in a fiscal year is less than the cumulative amount, the difference shall be carried over to a subsequent fiscal year or years and shall be added to the cumulative amount of tax credits that may be authorized in that fiscal year or years. Therefore, adding unused credits from the previous year(s), the cap in any given year past FY 2019 could well exceed $3.5 million. The tax credit is scheduled to sunset on December 31, 2024, unless extended. In response to similar legislation this year, DOR confirmed that this tax credit is a first come first served credit and they have not had to apportion the credit.

Oversight notes the pregnancy resource center tax credit program allows a taxpayer to receive a tax credit up to 50% of the contribution they make to a pregnancy resource center. Currently a pregnancy resource center can provide counseling, emotional and material support to a client but are prohibited from providing childbirth or abortion services.

In response to similar legislation filed this year, SB 204, officials at the **Department of Revenue** assumed this proposed section increases the amount of tax credit awarded to taxpayers from 50 percent of their contribution to the pregnancy resource centers to 70 percent of their contribution to pregnancy resource centers.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

During the 2018 Regular Session; HB 1288 increased the pregnancy resource tax credit cap to $3.5 million. This proposed legislation removes this cap, along with the sunset provisions. The Department in FY18 redeemed a total of $2,094,375 in the Pregnancy Resource Center tax credit, which consisted of credits at 50 percent of the contribution amount. If the tax credit award is increased from 50 percent of the contribution to 70 percent of the contribution, the Department estimates, based on FY18 redemption data, redemptions could increase by $1,047,152 for a total redemption amount of $3,141,527. The Pregnancy Resource Tax Credit, though, is limited to the tax liability of the taxpayer. Thus, it is unknown whether such increase in redemptions would occur in full.

Oversight notes this proposal allows facilities that offer services under the Alternatives to Abortion program to qualify for the pregnancy resource center. Oversight assumes this could expand the number of pregnancy resource centers that are eligible to distribute this tax credit. However, Oversight will not reflect a fiscal impact from this change alone.

Oversight notes that starting January 1, 2021 (FY 2021) this proposal increases the amount of the credit from 50% of the contribution to 70% of the contribution. Increasing the tax credit amount could encourage additional taxpayers to participate in the program. At 50%, the $3.5 million cap would generate $7,000,000 in contributions. This proposal would increase the credit rate to 70% and therefore, cost the state $4,900,000 ($7 million x 70%) in credits. This could result in an additional $1,400,000 ($4.9 m - $3.5 m) in credits per year. Oversight will show an impact of could exceed $1.4 million annually starting in FY 2022 (when calendar year 2021 tax returns are filed).

Oversight notes this proposal also would remove the sunset language from the pregnancy resource center tax credit. Since this program is to sunset on December 31, 2024, removal of the sunset would continue this credit past FY 2025. Oversight will show the impact as a loss of state revenues of could exceed $4.9 million annually starting in FY 2026 (current $3.5 m cap + $1.4 m increase in participation).

Oversight notes with the combination of;

- expanding the definition of pregnancy resource centers;
- increasing the percentage of the credit; and
- removing the cap

would increase the utilization of the credit and Oversight will show all impacts as Could exceed the estimates provided above.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§§188.010 and 188.017 - Right to Life of the Unborn Child Act

Oversight notes, in response to the previous version of this proposal, the **Department of Corrections (DOC)** stated the proposal would not have a direct fiscal impact on their organization.

Oversight notes in response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** stated according to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility (located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If this bill is enacted, the St. Louis facility closes. However, women will only have to drive a few more miles to Illinois, where abortions are legal.

Currently, there are three laws concerning abortion that contain penalties for violation (§188.080.001 - Class A misdemeanor; §188.080.002 - Class B felony; and §188.075.001 - Class A misdemeanor). No convictions of these statutes occurred in FY 2016 - 2018, even with the paucity of abortion facilities in the state. For these reasons, it is expected that enactment of this bill will have no fiscal impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight assumes there will be no fiscal impact to the DOC for fiscal note purposes.

Oversight notes, in response to the previous version of this proposal, the **Department of Social Services (DSS)** has stated the proposal would not have a direct fiscal impact on their organization.

In response to legislation with similar provisions banning abortions except in medical emergencies (SB 345), officials from the **Department of Social Services (DSS)** stated the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. (See the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019, Pub. L. No. 115-245, §§506-07, 132 Stat. 2981 (2018).)

AMERICAN OVERSIGHT

ASSUMPTION (continued)

In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (Stangler vs. Shalala, 1994 WL 764104 (W.D.Mo 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

Oversight notes in response to HB 126, the DSS stated the legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over $7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services.

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortions were paid for in FY 2016 that resulted from rape and incest.

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Oversight contacted the DSS and requested a letter be obtained from the Centers for Medicare and Medicaid (CMS) services stating whether the provisions of 188.026.3 would result in the loss of federal funding. DSS believes it is unlikely CMS will provide such a letter. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from $0 to (Unknown).

§§188.015 and 188.038 - Prohibition on selective abortions

In response to similar legislation (HB 771), officials from the **Department of Health and Senior Services (DHSS)** assumed the provisions of these sections would have no fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

In response to similar legislation (HB 771), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** stated these provisions are anticipated to have no fiscal impact on the DIFP. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight notes, in response to similar legislation (HB 771), the **Office of Attorney General**, the **Department of Social Services** and the **Office of State Courts Administrator** stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§188.018 - Unconstitutionality of provisions

Oversight assumes the provisions of this section will have no fiscal impact on state agencies.

§188.026 - Missouri stands for the unborn act

Oversight assumes the provisions of this proposal will have no fiscal impact on state departments.

§188.027 - Printed materials to include information on causing pain

In response to legislation from this current session relating to printed materials (HB 252), officials from the **Department of Health and Senior Services (DHSS)** assumed the proposal would have no fiscal impact on their organization.

Oversight notes that from conversations with DHSS officials the department states they already have a surplus of the printed materials required by this proposal stored in their warehouse. In addition, DHSS states that the required materials are posted on their website and can be printed by clinics/providers when necessary. It is further assumed by DHSS officials that if someone needed the required materials to be sent to them, the clinic/provider would bear the mailing costs. Therefore, this proposal is not expected to have a fiscal impact on the DHSS.

§188.028 - Consent for minor to obtain an abortion

In response to similar legislation (HB 127), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform the work associated with the proposal with existing staff and resources.

Oversight notes, in response to similar legislation (HB 127), the **Department of Health and Senior Services**, the **Department of Social Services** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

HW-C:LR:OD

AMERICAN OVERSIGHT

ASSUMPTION (continued)

§188.033 - Out-of-state abortions accompanied by printed materials

In response to similar legislation (HB 282), officials from the **Department of Health and Senior Services (DHSS)** assumed the proposal would have no fiscal impact on their organization.

Oversight notes that from conversations with DHSS officials the department states they already have a surplus of the printed materials required by this proposal stored in their warehouse. In addition, DHSS states that the required materials are posted on their website and can be printed by clinics/providers when necessary. It is further assumed by DHSS officials that if someone needed the required materials to be sent to them, the clinic/provider would bear the mailing costs. Therefore, this proposal is not expected to have a fiscal impact on the DHSS.

Oversight notes, in response to similar legislation (HB 282), the **Office of Attorney General, the Department of Social Services, the Office of State Courts Administrator** and **St. Louis County** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

§§188.043 and 188.044 - Malpractice and tail insurance

In response to similar legislation (SCS HB 126), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** stated this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Oversight assumes the DIFP will be able to perform the additional duties required by this proposal with existing personnel and resources. Oversight will reflect a zero fiscal impact for the DIFP for fiscal note purposes.

§§188.056, 188.057, and 188.058 - No abortions performed except in medical emergencies

Oversight notes the provisions of these sections provide that no abortion will be performed upon a woman at eight, fourteen or eighteen weeks gestational age or later, except in cases of medical emergencies. Oversight assumes these provisions would have no fiscal impact on state agencies.

Bill as a whole

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Oversight assumes the DIFP will be able to perform the additional duties required by this proposal with existing personnel and resources. Oversight will reflect a zero fiscal impact for the DIFP for fiscal note purposes.

Officials from the **Missouri Office of Prosecution Services** have stated the proposal would not have a fiscal impact on their organization. However, the creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Oversight notes that the **Department of Corrections**, the **Department of Public Safety, Missouri State Highway Patrol**, the **Office of State Courts Administrator**, the **Office of State Public Defender** and **Legislative Research** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

§188.375 - Late-term pain-capable unborn child protection act

Oversight notes in response to similar legislation (SB 345), officials from the **Department of Corrections (DOC)** stated according to the Department of Health and Senior Services, Missouri currently has one licensed abortion facility (located in St. Louis). Women seeking abortions in Missouri will either go to another state or to the St. Louis facility. If this bill is enacted, the St. Louis facility closes. However, women will only have to drive a few more miles to Illinois, where abortions are legal.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Currently, there are three laws concerning abortion that contain penalties for violation (§188.080.001 - Class A misdemeanor; §188.080.002 - Class B felony; and §188.075.001 - Class A misdemeanor). No convictions of these statutes occurred in FY 2016 - 2018, even with the paucity of abortion facilities in the state. For these reasons, it is expected that enactment of this bill will have no fiscal impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight assumes there will be no fiscal impact to the DOC for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Department of Social Services (DSS)** state the proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. (See PL 114-113, 114-223 and PL 114-254.) In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (Stangler vs. Shalala, 1994 WL 764104 (W.D.Mo 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

This legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over $7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services. To continue covering services in SFY 2020 to Medicaid participants, the State of Missouri would need an additional $7,408,762,188 in General Revenue to account for the reduction in Federal matching funds. A 2.4% medical inflation rate was used for FY 2020, FY 2021 and FY 2022.

SFY 2020: GR - $7,408,762,188, FED - 0, OTHER - 0, Total: $7,408,762,188
SFY 2021: GR - $7,586,572,481, FED - 0, OTHER - 0, Total: $7,586,572,481
SFY 2022: GR - $7,768,650,220, FED - 0, OTHER - 0, Total: $7,768,650,220

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortion were paid for in FY 2016 that resulted from rape and incest.

HW-C:LR:OD

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from $0 to (Unknown)

In response to similar legislation (SB 139), officials from the **Department of Health and Senior Services (DHSS)** stated §188.026.1-2 of the proposed legislation requires a physician performing an abortion to conduct a fetal heartbeat determination, and a record of the results of the fetal heartbeat determination exam to be included in the woman's medical record. The DHSS, Division of Regulation and Licensure, Section for Health Standards and Licensure (HSL) is responsible for regulating abortion facilities. This will require two additional steps to be added to the survey process to ensure the physician performing the abortion conducts a fetal heartbeat determination exam, and the medical record includes documentation of the fetal heartbeat determination. It is assumed that these new questions will require less than 30 additional minutes per survey, at the three abortion facilities in Missouri, for a total of one and one-half hours of additional work a year. These surveys are conducted by a Health Facilities Nursing Consultant. The average hourly rate for this position is $26.05, so the additional cost of these additional questions is $39.08 annually (1.5 hours x 26.05).

In addition, §188.052.2(4) of the proposed legislation states that the time, date, method, and results of the fetal heartbeat detection test performed prior to an abortion shall be captured in the individual complication report. This would require DHSS, Division of Community and Public Health (DCPH), to make minor revisions to the Complication Report for Post-Abortion Care form that is posted on the DHSS website, and would also require minor changes to the DHSS database used to capture this information. Both of these revisions could be completed by current staff. Forms are not printed, therefore, DCPH would not incur any cost to print revised forms.

The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DHSS will be able to perform the additional duties prescribed in this bill with current staff and resources and will present no fiscal impact to the DHSS for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

AMERICAN OVERSIGHT

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

In response to similar legislation (SB 139), officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact on the DIFP. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DIFP can perform the additional duties required by this proposal with existing personnel and resources.

Oversight notes the provisions of §188.026.4 provide that if a physician fails to conduct a fetal heartbeat detection test prior to the performance or inducement of an abortion, he/she will be subject to having his/her license application rejected, revoked, or suspended by the state board of registration for the healing arts for a period of six months and shall be subject to a fine of one thousand dollars.

Per DHSS's 2016 Annual Report (most current available), 4,562 abortions were performed in Missouri. Per www.steadyhealth.com, fetal heartbeats can usually be detected around 6-7 weeks, although it can take up to 10 weeks for the heartbeat to be heard. Other online information indicated a doctor can usually detect the baby's heartbeat at 9-10 weeks, although sometimes it takes 12 weeks for it to be easily detected. For purposes of this fiscal note, Oversight assumed a fetal heartbeat would be detected after 9-10 weeks. According to DHSS's report, 1,323 abortions (29%) were performed after the 9-10 week period of time.

Oversight notes, per DHSS's response, there are three facilities in Missouri which perform abortions. With the limited number of facilities providing abortion services, Oversight assumes there would be a limited number of physicians required to comply with the provisions of this the proposal. Therefore, for fiscal note purposes, Oversight is not presenting potential fine revenue; however, any fine revenue collected would be deposited in the State School Moneys Fund (0616).

Oversight notes, in response to similar legislation (SB 139), the **Office of State Courts Administrator (OSCA)** stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for OSCA.

AMERICAN OVERSIGHT

FISCAL IMPACT - State Government	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
GENERAL REVENUE FUND				
Cost - DOR §135.630 removing the cap and sunset language from the pregnancy resource center	$0	$0	(Could exceed $1,400,000)	(Could exceed $4,900,000)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	**$0**	**$0**	**(Could exceed $1,400,000)**	**(Could exceed $4,900,000)**
FEDERAL FUNDS				
Loss - DSS (§188.026) A potential reduction in federal funding if Missouri is found to be non-compliant with federal law	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

FISCAL IMPACT - Local Government	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
	$0	**$0**	**$0**	**$0**

HW-C:LR:OD

AMERICAN OVERSIGHT

FISCAL IMPACT - Small Business

This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide services to MO HealthNet recipients through these health care providers.

FISCAL DESCRIPTION

This proposal modifies provisions relating to abortion and the pregnancy resource center tax credit.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Revenue
Legislative Research
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender

Kyle Rieman
Director
May 16, 2019

Ross Strope
Assistant Director
May 16, 2019

HW-C:LR:OD

AMERICAN OVERSIGHT

Sarah W. Martin, 11th Ward Alderwoman, Lyda Krewson, Mayor, Annie Rice, 8th Ward Alderwoman, Dan Guenther, 9th Ward Alderman, Larry Arnowitz, 12th Ward Alderman, Cara Spencer, 20th Ward Alderwoman, Bret Narayan, 24th Ward Alderman, Shane Cohn, 25th Ward Alderman, and Heather Navarro, 28th Ward Alderwoman from City of St. Louis provided the following information:

AMERICAN OVERSIGHT

BOARD OF ALDERMEN

CITY OF SAINT LOUIS
MISSOURI

Sarah Wood Martin
Alderwoman, 11th Ward

--COMMITTEES--
Engrossment Rules, Resolutions & Credentials
Health & Human Services
Parks & Environmental Matters
Streets, Traffic & Refuse

June 11, 2019

Office of the Missouri State Auditor
Auditor Nicole Galloway
Capitol Building, Suite 121
P.O. Box 869
Jefferson City, Missouri 65102

Dear Madam Auditor Galloway,

We write to you as elected officials representing a portion of the state's largest economy. Please consider this correspondence a request of a cost overview analysis to determine the potential financial impact of the Missouri Legislature's passage of House Bill 126.

The Saint Louis region generates nearly half of Missouri's revenue, bringing in over $30 million in sales tax revenue. According to Missouri's Department of Economic Development, "The St. Louis region boasts one of America's great metropolises in the Gateway City, with almost ten Fortune 500 firms, world-class museums, restaurants, shopping, and sports (Cardinal baseball and Blues Hockey). Leading industries include retail trade, professional and technical services, construction, food services and administrative and support services such as Edward Jones, Enterprise Rent-A-Car, AG Edwards and Anheuser-Busch."

We already know from the previous legislation, discriminatory laws in Missouri and other states have negative financial impacts. In 2016, when the Missouri Legislature attempted to discriminate against our LGBT neighbors we heard widespread criticism from the business community about how this law would have made Missouri an unattractive place to do business. House Bill 126 has the same effect. Discrimination, in any form, is detrimental to the hiring abilities and financial bottom line of our major industries. Allowing HB 126 to become law will spark backlash against our state. We could face economic boycotts and travel advisories as our residents push back against this unconstitutional law. This is not unprecedented in Missouri- we need look no further than the NAACP's issuance of a travel advisory in 2017 warning visitors who travel to our state that they may face discrimination. Right now, we can look to states like Georgia to see legislation similar to HB 126 has triggered a boycott from leading artists and entertainers costing the state millions. We cannot suffer another blow to our economic development.

Room 230, City Hall • 1200 Market Street • St. Louis, MO 63103 • (314) 622-3756
martins@stlouis-mo.gov

AMERICAN OVERSIGHT

These types of discriminatory laws have a broad impact. Potential students have announced they will no longer consider Missouri's top higher education institutes. These same institutions have research facilities that will have to contend with the best and the brightest looking to work elsewhere. Our convention center will be competing to attract conferences and entertainment with cities in other more inclusive states. Corporations rooted in Saint Louis and those looking to relocate have already denounced discriminatory laws citing the difficulty of competing for top talent.

The Legislature's Fiscal Oversight Division reports the fiscal impact of this fully implemented legislation on General Revenue in 2026 could exceed $4,900,000. Our state also stands to lose $7.2B in Medicaid funding should this measure become law. This number was determined quickly and without a full response from all departments. We know this legislation will have severe financial consequences for our city. We ask you to consider those costs in your analysis of referenda seeking to repeal HB 126 that will come before your office for review.

Sincerely,

Mayor Lyda Krewson
8th Ward Alderwoman Annie Rice
9th Ward Alderman Dan Guenther
11th Ward Alderwoman Sarah W. Martin
12th Ward Alderman Larry Arnowitz
20th Ward Alderwoman Cara Spencer
24th Ward Alderman Bret Narayan
25th Ward Alderman Shane Cohn
28th Ward Alderwoman Heather Navarro

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from the **Attorney General's office,** the **Secretary of State's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, State Technical College of Missouri, University of Missouri, St. Louis Community College,** and **Missouri Life Sciences Research Board.**

Fiscal Note Summary

Revenues from state sources may decrease by at least $4.9 million annually and federal Medicaid revenues may decrease by an unknown amount, up to $7.2 billion annually. The Public Defender's Office anticipates increased costs of an unknown amount to defend women's medical actions after conception. Local governmental entities anticipate a significant negative impact.

AMERICAN OVERSIGHT

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Green, Maddie[Maddie.Green@ago.mo.gov]; Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
Cc: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Corrigan, William[William.Corrigan@ago.mo.gov]
From: Wagner, Ray[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F577E20AF58F4CE4AFCDDD101E8A3745-WAGNER, RAY]
Sent: Wed 3/29/2023 8:50:11 AM (UTC-05:00)
Subject: Fwd: For reference and comparison, attached is what the previous state auditor - Nicole Galloway - submitted as her fiscal note and fiscal note summary on HB 126 (Missouri's pro-life law) in 2019, the subject of a referendum attempt that year
image001.jpg
Missouri State Auditor's Office Fiscal Note - 20-R001.pdf

Sent from my iPhone

Begin forwarded message:

From: Samuel Lee <samuelhlee@mindspring.com>
Date: March 28, 2023 at 11:59:31 PM CDT
To: "Wagner, Ray" <Ray.Wagner@ago.mo.gov>
Subject: For reference and comparison, attached is what the previous state auditor - Nicole Galloway - submitted as her fiscal note and fiscal note summary on HB 126 (Missouri's pro-life law) in 2019, the subject of a referendum attempt that year

Ray,
For reference and comparison, attached is what the previous state auditor – Nicole Galloway – submitted as her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a referendum that year.Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum attempt on HB 126 (Missouri's pro-life law enacted in 2019).
Sam
Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-078 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-078)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-078 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated initiative petition 24-078 is identical to 24-077 with the following exception:

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

Comments:

The fiscal impact for 24-078 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

AMERICAN OVERSIGHT

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-078 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact is anticipated to their office.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-078 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

AMERICAN OVERSIGHT

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-078 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-081 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-081)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-081 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-081 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall

AMERICAN OVERSIGHT

permit the health care professional to provide the abortion without consent if, in the good faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Comments:

The fiscal impact for 24-081 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-081 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-081 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-081 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN
LIFE
MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-082 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-082)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-082 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-082 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes Section 36.6, which states "Nothing in this Section requires government funding of abortion procedures other than as required by federal law."

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-082 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-082 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-082 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-082 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-084 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-084)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-084 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-084 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's las menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that, in the good faith judgement of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077).

AMERICAN OVERSIGHT

Comments:

The fiscal impact for 24-084 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-084 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

AMERICAN OVERSIGHT

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

AMERICAN OVERSIGHT

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-084 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-084 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have has no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT



CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-085 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-085)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-085 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-085 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Adds new Section 36.6, which states "Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without consent if, in the good

AMERICAN OVERSIGHT

faith judgement of a health care professional: (1) obtaining consent may lead to physical or emotional harm to the minor, (2) the minor is mature and capable of consenting to an abortion; or (3) obtaining consent would not be in the best interest of the minor."

Removes "other than as required by federal law" from Section 36.8 (Section 36.6 in 24-077)

Adds definition for Fetal Viability in Section 36.10(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-085 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

AMERICAN OVERSIGHT

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-085 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

AMERICAN OVERSIGHT

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-085 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-085 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

- There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-086 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-086)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-086 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-086 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes Section 36.6 "Nothing in this Section requires government funding of abortion other than as required by federal law"

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.8(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-086 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-086 has no fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-086 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-086 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative ballot and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

    - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
    - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

        - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
        - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
        - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
        - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
        - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

            - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law.** This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state**. And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri.**

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

RECEIVED
MAR 29 2023
MISSOURI
ATTORNEY GENERAL

March 29, 2023

The Honorable Andrew Bailey
Attorney General
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Bailey:

Our office received initiative petition 24-087 on March 9, 2023. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

> State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

Ted Fugitt, CPA, CGAP
Assistant Director of Audits

Enclosures

AMERICAN OVERSIGHT

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-087)

Subject

Initiative petition from Anna Fitz-James regarding a proposed constitutional amendment to Article I. (Received March 9, 2023)

Date

March 29, 2023

Description

This proposal would amend Article I of the Missouri Constitution.

The amendment is to be voted on in November 2024.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education and Workforce Development,** the **Department of Health and Senior Services,** the **Department of Commerce and Insurance,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Missouri Department of the National Guard,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri,** and **St. Louis Community College.**

AMERICAN OVERSIGHT

Susan Klein, Executive Director, Missouri Right to Life provided information to the State Auditor's office.

Samuel H. Lee, Campaign Life Missouri provided information to the State Auditor's office.

David C. Drury, Attorney at Law provided information to the State Auditor's office.

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets and Entitlements, The Heritage Foundation provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

Officials from the **Department of Economic Development** indicated no fiscal impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-087 and determined there is no fiscal impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated changes to the bill are as follows:

Initiative petition 24-087 is identical to 24-077 with the following exceptions:

Adds new Section 36.4, which states "Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgement of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."

Removes "other than as required by federal law" from Section 36.7 (Section 36.6 in 24-077)

AMERICAN OVERSIGHT

Adds definition for Fetal Viability in Section 36.9(1), "'Fetal Viability,' the point in pregnancy when, in the good faith judgement of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the .fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Comments:

The fiscal impact for 24-087 is the same as the fiscal impact for 24-077 and is as follows:

- FY 2024 General Revenue: ($0 to Unknown)
- FY 2025 General Revenue: ($0 to Unknown)
- FY 2026 General Revenue: ($0 to Unknown)

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition proposing to amend Article I.

Officials from the **Department of Revenue** indicated the initiative petition does not have an impact on their department.

Officials from the **Department of Public Safety** indicated no impact for their department, Director's office.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact.

Officials from the **Governor's office** indicated this proposal relating to reproductive issues does not financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

AMERICAN OVERSIGHT

Officials from the **Department of Conservation** indicated Initiative Petition 24-087 has no anticipated fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to reproductive issues will not financially impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be $10 million based on the cost of the 2022 primary and general election reimbursements.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, their office estimates publication costs at $70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

AMERICAN OVERSIGHT

Officials from the **Office of the State Public Defender** indicated this initiative petition has no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office is anticipated.

Officials from **Clay County** indicated they estimate no fiscal impact as a result of this initiative.

Officials from **Greene County** indicated in reviewing initiative petition 24-087 it has been determined there will be an increased cost to the County of Greene due to loss of tax revenue if voters vote to amend Article I.

The Missouri Department of Health & Senior Services recorded 135 "resident abortions" for Greene County in 2020 and 118 in 2021. The population of Greene County per the 2020 United States census was 298,915. (https://www.census.gov/quickfacts/fact/table/greenecountymissouri/PST045221)

In terms of economic impact, Greene County received $112,673,249 in sales and property taxes for calendar year 2022 (**$376.94** per capita based on **2020** census data). Accordingly, calculations from these figures indicate an annual loss in population of **135** represents a cost to the County of **$50,886.90**; an increase in abortion statistics could reasonably be extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.

Please see the attached table demonstrating the anticipated yearly on per capita basis and the overall fiscal impact on Greene County tax collections and revenues based on the recorded abortions in 2020 by Missouri Department of Health and Senior Services.

Additional research regarding the broader fiscal impact of lower fertility rates on local and state communities and government budgets may be found here:

- https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets

AMERICAN OVERSIGHT

Greene County Collections in 2022	
2020 Population	**298,915**
Total Sales Tax Collected	126,986,094.91
Parks I	(8,226,052.01)
Parks II	(8,773,337.47)
Dan Kinney Bond from Parks I	(551,342.50)
LEST	(11,631,863.21)
Strafford TIF	(24,374.44)
Springfield Plaza TIF	(174,240.83)
Sales Tax Subtotal	97,604,884.45
Real Estate Tax	12,222,341.99
Personal Property Tax	2,846,022.58
Property Tax SubTotal	15,068,364.57
Total Taxes	112,673,249.02
Per Capita	**376.94**
Annual lost population	**135**
Annual Cost	**50,886.90**

AMERICAN OVERSIGHT

Officials from **St. Louis County** indicated this has no fiscal impact on their county.

Officials from the **City of Jefferson City** indicated they do not think there would be a direct fiscal impact to the City of Jefferson imposed by Initiative Petition 24-087 proposing to amend Article I. There could be an indirect fiscal impact resulting from increased lawsuits related to violations of the act.

Officials from the **City of Kansas City** indicated this proposed amendment would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact.

Officials from the **St. Louis Community College** indicated they have reviewed the initiative petition and believe the initiative would have no direct cost or revenue impact.

Susan Klein, Executive Director, Missouri Right to Life provided the following information:

AMERICAN OVERSIGHT

MISSOURI RIGHT TO LIFE

PO Box 651
Jefferson City, MO 65102
573-635-5110
www.missourilife.org

March 15, 2023

Office of the Missouri State Auditor
The Honorable Scott Fitzpatrick
301 West High Street, Room 880
Jefferson City, MO 65102

Dear Auditor Fitzpatrick,

On behalf of the Members, Board and Staff of Missouri Right to Life, I submit to you our comments for consideration and inclusion in the fiscal note you will be preparing regarding the effects to the State of Missouri and its Local Governments of Initiative Petition(s) 2024-077 through 2024-087.

The Petitions Would Create Devastating Impacts for Missouri's Budget:

On March 8, 2023, 11 proposed initiative petitions (2024-077 through 2024-087) were filed with the Missouri Secretary of State's Office by Anna Fitz-James for a campaign committee called "Missourians for Constitutional Freedom." While each initiative petition has some slight variations, they are all identical in their purpose and their fiscal effects to General Revenue, Federal Funds, and Other Funds received by the State of Missouri and the impact to local governments.

The fiscal effects of some of the impacts of the petition(s) follow:

- **Abortion Injuries, Sanctions, Litigation and Loss of Federal Funding**: The petition will allow for abortions to be performed up until the moment of birth and possibly beyond. In addition to the loss of the life of the unborn child and the ending of his or her priceless contributions to our state and society, surgical and chemical abortions have risks and complications to the health of the mother. The cost impacts of surgical and medical abortion physical injuries would result in a devastating impact to Missouri's balanced budget due to an expansion of costs for Missouri's state and Federally-funded healthcare programs. In addition, women endure emotional trauma after an abortion. A massive increase in funding for mental health services would be required. Under current Federal law, states are barred from using Federal funds to pay for abortions except in limited cases (the Hyde Amendment). Federal funding could be in jeopardy and Missouri could be subject to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. In 2019, more than $7.2 billion in Federal funds were budgeted for Mo HealthNet services (Department of Social Services, Department of Mental Health, and Department of Health and Senior Services). The loss of these funds would be devastating to Missouri.

AMERICAN OVERSIGHT

- **Loss of Licensing Fee Revenues/Penalties**: The petition will allow for anyone to perform an abortion with no penalty, prosecution or adverse action for performing the abortion. An abortion provider would no longer have a reason to maintain his or her license with the State of Missouri (and anyone who chose to perform an abortion would be protected under the Constitution to do so without any regulations or consequences). Missouri laws and regulations would be nullified, and licensing fees normally collected would decline.

- **Rural Hospitals Impacted**: Rural hospitals are already struggling. The petition will allow anyone to perform an abortion with no penalty, prosecution or regulation, and will result in a skyrocketing number of women injured by abortion who will need emergency services, flooding Emergency Rooms and health clinics and limiting or delaying access to emergency healthcare services needed by other individuals. This will result in a fiscal impact to the state. The state will also experience a fiscal impact through staff shortages as abortion-injured state employees seek medical care, surgery and recovery time off work to manage complications of abortion.

- **Missouri Could Face a Budgetary Crisis Due to Loss of Federal Funding from Violating Federal Conscience Laws:** The petition will force Missouri to be out of compliance with Federal conscience laws. This could result in the loss of billions of dollars of Federal funding, litigation and sanctions. If the Federal Government sanctions Missouri due to these violations, this will be devastating and create a budgetary crisis in Missouri. The state will also experience a fiscal impact through staff shortages as state employees flee state jobs where they feel their conscience is violated due to being forced to assist with an abortion.

- **Abortions Funded With Public Tax Dollars:** The petition will allow for the funding of abortions with public tax dollars. The language does not prohibit government funding of abortion procedures or of abortion providers. This would result in a massive fiscal impact to Missouri's balanced budget.

- **Constitutional Protections for Human Traffickers**: The petition will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion. This would result in Constitutional protections for child sex traffickers who impregnate their victims and coerce them into an abortion and would render ineffective Missouri law enforcement, prosecution and justice efforts tasked with upholding our Constitution and laws. The petition could hamper the Federal Government's efforts under The Trafficking Victims Protection Act of 2000 and other Federal laws and could result in sanctions from any Federal funding that Missouri would otherwise be eligible to receive.

- **Sex Changes, et. al, Funded With Public Tax Dollars**: The petition, under the guise of "The Right to Reproductive Freedom," will allow the funding of sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars. This would result in a massive fiscal impact to Missouri's balanced budget.

AMERICAN OVERSIGHT

In summary, any fiscal note of the petition(s) should contain the following language and should also include the estimated fiscal net effects to the State of Missouri and its local government:

This initiative petition (a) will allow for abortions to be performed up until the moment of birth and possibly beyond, which would put Missouri in jeopardy of losing billions of dollars of Federal funding and create an unplanned strain on the state's General Revenue, Other and Local Funds as a result of abortion injuries, sanctions, litigation, loss of licensing fee/penalty revenues, and overloaded emergency rooms and healthcare facilities, (b) will put Missouri in violation of Federal conscience laws, which could result in a loss of billions of dollars of Federal funding and an increase of state and local government employee vacancies and litigation due to exercising their rights of conscience, (c) will allow for anyone to perform, or assist with, an abortion with no penalty, prosecution or adverse action for performing the abortion, thereby creating Constitutional protections for Human Traffickers which could result in a loss of Federal funding, and (d) will allow for the funding of abortions, sex change surgeries, puberty blockers, hormone therapy and other "reproductive services" with public tax dollars which would result in a massive fiscal impact to the State of Missouri and its local government budgets.

Sincerely,

Susan Klein

Susan Klein
Executive Director
Missouri Right to Life

AMERICAN OVERSIGHT

Samuel H. Lee, Campaign Life Missouri provided the following information:

AMERICAN OVERSIGHT

CAMPAIGN LIFE MISSOURI

Samuel Lee
Director

March 16, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

In accordance with the provisions of section 116.175, this is a proposed statement of the fiscal impact of the 11 initiative petitions numbered 24-077 through 24-087, which your office received on March 9, 2023.

To summarize, the proposed ballot measures – all of which would amend the Missouri Constitution – could result in:

- A decrease in federal Medicaid revenues by an unknown amount, up to $12.5 billion annually.
- Increased costs to taxpayers of unknown amounts, because of medical treatment of, or other services for, children or adults injured by abortions, sex-change operations, genital mutilation or other unspecified "reproductive health care" performed by unlicensed or untrained persons.
- Increased costs of an unknown amount to the Department of Health and Senior Services for the inspection and licensing of thousands of abortion facilities.
- Loss of revenue of unknown amounts to the state and its political subdivisions, because of boycotts of businesses, shopping, tourism or other revenue-generating activities, as a result of Missouri becoming the Midwest's "abortion destination" state.
- Long-term loss of revenues of unknown amounts to the state and its political subdivisions, because of a decrease in the workforce due to the number of children who are aborted before birth. Also, because of individuals who can no longer work after they become disabled as a result of unsafe abortions, sex-change operations, genital mutilation or other unspecified, unsafe "reproductive health care." But more important than fiscal costs, the human cost to Missouri's citizens is unimaginable.

Former-Auditor Galloway made a comparable analysis of the fiscal impacts when she issued her fiscal note and fiscal note summary on HB 126 (20-R001 on June 19, 2019) – the subject of a

AMERICAN OVERSIGHT

referendum that year. Her fiscal note summary became part of the official ballot title certified by Secretary of State on August 14, 2019, for the referendum on HB 126.

Supporting Information on Fiscal Impact of the 11 Initiative Petitions:

- The loss of federal Medicaid matching dollars, which in the proposed fiscal year 2024 budget **would be a loss of nearly $12.5 billion**.

  - In FY 2023, Missouri lawmakers appropriated about $16.9 billion for Medicaid (MO HealthNet) across state agencies. The majority of Medicaid financing in 2023 – $10.6 billion – came from federal matching funds. The governor's proposed budget for MO HealthNet for FY 2024 is nearly $19.3 billion – almost $12.5 billion which would come from federal funds.
  - The loss of federal Medicaid matching funds could occur if Missouri is out of compliance with federal Medicaid requirements, for example:

    - If the state cuts off Medicaid reimbursements to Catholic hospitals. This could be a result of the requirement in the initiative petitions that the "Government shall not deny or infringe upon a person's fundamental right to reproductive freedom." This might include the state requiring Medicaid providers to sterilize patients, dispense puberty blockers or remove sex organs during sex-change operations.
    - This might also include the state requiring hospitals to participate in the horrendous practice of genital mutilation, currently prohibited by state law under section 568.065, and for which no defense is allowed for "a matter of custom, ritual or standard practice, or [by] consent to the conduct by the child."
    - But because of the broad-based definition of "reproductive health care" in the 11 initiative petitions ("including but not limited to"), state courts could easily find that genital mutilation is constitutionally protected activity, and strike down existing law.
    - However, for the state government to require Catholic health care providers (or others) to provide these procedures, it would be a violation of their conscience rights – for which the federal government could withhold from the state, Medicaid matching dollars.
    - For example, in California in 2020, HHS disallowed $200 million in federal Medicaid matching funds per quarter due to the state's unlawful abortion insurance mandate, which forced a Catholic order of religious sisters and a non-profit Christian Church to provide abortion health insurance coverage. See also:

      - "The Fight Over California's Abortion Coverage Mandate," *Regulatory Review*, February 3, 2021 ("Can a state require that all health plans offered to its residents cover elective abortions? The federal government thinks not, and the state of California is poised to lose at least $200 million in Medicaid dollars because it insists that health plans in its state cover abortion services.")

AMERICAN OVERSIGHT

- "Federal agency says UVM Med Center forced nurse to assist in abortion," *VTDigger*, August 28, 2019 ("The U.S. Department of Health and Human Services has accused the University of Vermont Medical Center of forcing a nurse to assist in an abortion procedure despite the nurse's religious objections. … The letter from Roger Severino, the director of HHS' Office for Civil Rights, asks the hospital to adjust its policies or face losing the federal funding it receives from HHS.")

  - There might be additional circumstances where state compliance with at least some of the proposed constitutional amendments would force the state to be out of compliance with federal Medicaid law, such as the state paying for abortions (or other procedures) with federal funds that are not permitted to be reimbursed under federal law. For example, the state might be compelled by the terms of some of the initiative petitions to pay for all abortions for all Medicaid-eligible females, because failing to do so might "discriminate against persons" if the state is paying for the labor and delivery of children for all Medicaid-eligible females. In other words, under the state constitution, Missouri might no longer be "permitted to enact persuasive measures which favor childbirth over abortion" (*Planned Parenthood v. Casey*, 505 U.S. 833, 886 (1992)). Such non-compliance with federal Medicaid law might also apply to other broad-based, undefined "reproductive health care," which the state might also be compelled to pay for.

- Under the initiative petitions, the "Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, ANY person of ANY age could legally provide, or assist another person in obtaining, an abortion, a sex-change operation, genital mutilation or other unspecified "reproductive health care." **This could result in numerous, life-altering medical complications to the child or adult who underwent the "reproductive health care."** Especially with abortion – particularly for abortions performed later in pregnancy – this could result in huge medical costs for her and her child **that are ultimately paid for by taxpayers.**

  - Regarding abortion, in Missouri, the cost of inpatient medical procedures and emergency department services for treating "issues before childbirth with complications" is a **median charge per person of $11,977** – with a minimum charges of $4,140 and a **maximum charge of $35,345**.
  - And the cost could be even higher for an abortion-related ER visit. One recent study found that a "[p]atient concealment and/or physician failure to identify a prior abortion during an ER visit is a significant risk factor for a subsequent hospital admission." In fact, "[c]hemical abortion patients whose abortions are misclassified

AMERICAN OVERSIGHT

as miscarriages during an ER visit subsequently experience on average 3.2 hospital admissions within 30 days. 86% of the patients ultimately have surgical removal of retained products of conception (RPOC)."

- According to the CDC, in 2020, nearly 10,000 Missouri residents obtained abortions (9,980 total, but only 167 within the state). Having unlicensed, non-medical personnel permitted to perform or induce abortions within the state on even a fraction of these 10,000 girls or women could result in untold harm to them now – and harm to their future health and fertility.
- And there might be additional costs to the state or political subdivisions beyond treating the complications to girls or women from being provided abortions by non-physicians or even non-medical personnel. Any low-birthweight infant born alive after a late-term abortion could need long-term NICU care and possibly permanent assistance throughout childhood and during his or her adult life.
- According to a 2020 *New York Times* story: "The March of Dimes estimates that the average societal cost of each preterm birth, which includes medical care, early intervention services and lost productivity, is $65,000."
- That same story reported on a cost of $4 million in NICU costs for triplets who were born prematurely.
- Preterm birth lifetime costs in the United States (as of 2016) were "estimated to be $25.2 billion: $17.1 billion for medical care of persons born preterm, $2.0 billion for delivery care, $1.3 billion for early intervention and special education, and $4.8 billion in lost productivity due to associated disabilities in adults."

- **Other costs could be the licensing and inspection of multiple locations (potentially thousands of sites) as "abortion facilities," as required under Missouri law**. This is because section 197.205 requires that no person or governmental unit shall establish, conduct or maintain an abortion facility in the state without a license issued by the Missouri Department of Health and Senior Services (DHSS).

  - Section 188.015 defines an "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital".
  - Section 197.230 states that "[i]n the case of any abortion facility, the department [of health and senior services (DHSS)] shall make or cause to be made an unannounced on-site inspection and investigation at least annually." Such on-site inspections and investigations must include a variety of areas relating to staffing and equipment to respond to medical emergencies, compliance with Missouri's abortion laws and the requirement that continuous physician services or registered professional nursing services are to be provided whenever a patient is in the facility.
  - There are more than 7,000 licensed pharmacists in Missouri, and under the proposed constitutional amendment, any pharmacy (or other place) where a pharmacist provides abortion pills, DHSS would be required to inspect and license. **This would**

AMERICAN OVERSIGHT

be an enormous cost to the department and to taxpayers. And any other place where abortion pills would be provided (homes, schools, vending machines, doctor's offices, clinics, etc.) would also have to be inspected at least once a year and licensed.

- **Economic boycotts of Missouri and its businesses could result if the "Show-Me" state becomes the "Abort-Me" state, once it is transformed into the Midwest's "abortion destination"** – a distinct possibility since Missouri is "within a day's reach of half of U.S. households".

  - Just as some pro-abortion advocates in other states are promoting boycotts of states like Missouri that currently protect unborn children from abortion, pro-life advocates in other states might boycott by no longer purchasing from Missouri businesses, or engaging in travel, tourism or shopping in Missouri. How tragic that would be for Missouri, which has been described as one of the top pro-life states in the country.
  - Some "red" states have been prohibiting or attempting to prohibit their governmental entities from doing business with financial firms in other states that take environmental, social and corporate governance (ESG) into consideration, and those same states and additional ones might extend that to any "abortion destination" state – which is what Missouri could become if any one of the 11 initiative petitions is enacted into law.
  - "Missouri tourism provides a $13.5 billion economic impact that creates more than 257,000 jobs in the state," according to the Missouri Division of Tourism. It could be a devastating loss to the state and its residents if Missouri became the abortion capital of the Midwest.

- By some estimates, the economic cost to the U.S. of abortion in 2019 – due to the loss of nearly 630,000 unborn lives – was at least $6.9 trillion, or 32 percent of GDP. **Missouri could experience increased economic loss if the number of abortions increases in the state.** And unsafe, legal abortions in the state could result in the disability of countless women who – perhaps permanently – would be unable to enter or remain in the workforce.

  - According to a June 15, 2022, report of the Joint Economic Committee (JEC) Republicans – *The Economic Cost of Abortion* – "the economic cost of abortion due the loss of unborn lives is 425 times larger than the earnings loss mothers would be expected to incur when having a child."
  - According to a key finding in the report: "In the long run, abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance programs like Social Security and Medicare that rely on workers to support a growing elderly population."
  - And as the International Planned Parenthood Federation has noted: "**Unsafe abortions** are performed by un- or under-trained providers … It is possible to have an unsafe, legal abortion." (underlining added)

AMERICAN OVERSIGHT

- Under the initiative petitions, "any person assisting a person in exercising their right to reproductive freedom" shall not "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." Thus, unlicensed, untrained persons of ANY age could perform unsafe, legal abortions or other "reproductive health care," and the "Government shall not discriminate against persons … in doing so." While the economic cost of this policy is incalculable, more important and horrifying, the human cost to Missouri's citizens is unimaginable.

Auditor Fitzpatrick, if we can be of further assistance, please do not hesitate to contact us.

Sam

Samuel H. Lee
Campaign Life Missouri
P.O. Box 142585
St. Louis, MO 63114-0585
(314) 368-4242
Email: samuelhlee@mindspring.com
Twitter: @samuelhlee

CAMPAIGN LIFE MISSOURI
P.O. Box 142585 • St. Louis, MO 63114-0585

AMERICAN OVERSIGHT

David C. Drury, Attorney at Law provided the following information:

AMERICAN
OVERSIGHT

Dear Auditor Fitzpatrick:

I am a licensed attorney in the St. Louis Metropolitan area who has practiced law here for the last fifty years.

Eleven similar proposals to destroy major Missouri laws which have existed for decades are being suggested by petition numbers 2024-077 to 2024-087.

As you are aware, section 116.175 et al requires that a fiscal note and fiscal note summary state a measure's estimated cost or savings to any state or local governmental entity. In general, a strong fiscal outlook is an essential foundation for a growing, thriving economy. The gap between income and spending is subsequently closed by government borrowing, something to ideally be avoided. Moreover, voters, especially in this conservative state, should be informed and educated of the costs of measures so radical they reverse and erase in one fell swoop the studied product of elected representatives. Indeed, the cost of a proposal may be the reason a voter decides against it.

As commented, the above proposals, although different in some respects, all contain much identical language. For example, the Preamble and first three numbered paragraphs (except 077 uses the word "entails" in line 2 or paragraph 2) are the same. All contain a "discrimination" paragraph, a "severability clause, and the definitions of "Government" are copied throughout. Other deletions or additions to the submissions do not detract from the fact that multiple unfavorable fiscal consequences will result if passage of any happens. So, I feel it is fair to say that these comments relate to each and every variation, rather than to repeat the same points one by one, over and over.

Another observation about which no one can reasonably disagree is that these are extremely broad, and being so broad are vague and ambiguous. Applications can be to an expansive variety of situations, all at costs to the state and local governmental agencies. This is especially the case in light of the present political structure of the federal government, and of course many federal monies flow to the State of Missouri. Another way of saying this, although a somewhat different point, is the potential, actually a likelihood, that direction of funding can be "weaponized", so state laws conform to federal ones. Thus, the state of Missouri is "fiscally" affected. The federal government and the states do not exist as if there is a wall in between. Money flows back and forth, and thus a state can easily be targeted and penalized by federal legislative and executive actions.

Most recently as this week President Biden proclaimed that it was "cruel" and "close to sinful" for Florida to ban subjecting children to sex-change procedures. (Not to subject the children, but to ban subjecting the children)! The aforesaid ballot proposals insist that the "right to reproductive freedom" shall not be denied, interfered with, delayed, or otherwise restricted, and governmental action should be deemed invalid. The ballot also uses language in paragraph 2 of all versions the clause "not limited to". It would thus appear that the subject of sex-change procedures, is included. Similarly, some of the

AMERICAN OVERSIGHT

suggested versions require no parental or guardian consent whatsoever, and others only superficially address the subject with a sure-fire exception that a health care professional (not even a treating physician) can approve an abortion without consent if he/she thinks that getting consent may lead to emotional harm to the minor. All of the proposals do not even require that a physician is necessary to provide medical care. In fact you don't even need any license. Medical malpractice will automatically result. The harm to patients for this poor care, and the cost to the State for care of these patients will be an adverse fiscal result.

All of the above circumstances, would lead responsible hospitals and medical care providers to practice their profession with higher and different standards. And so they would refuse to abide by the above random, and harmful, provisions. Next, we come to the subject of "who is going to pay the bill"? Medicaid, as we know, pays an enormous amount of medical charges. Hospitals and doctors get reimbursed by the State, but the State must comply with federal law. If a State fails to follow the law, for the federal portion, which is over half, it may not get reimbursed. The State suffers fiscally. My numbers are that the State of Missouri receives 12.5 billion in federal Medicaid money.

What if, for example, Cardinal Glennon Hospital in St. Louis refused to perform sex change surgery on a minor, with or without parental consent, in its hospital? It is against its religious beliefs, among many other reasons. Can the hospital be denied Medicaid funds? The text of the proposals require such. The President has just declared that refusing to perform this is "cruel". If the State foots the bill and does not get reimbursed from the federal government, this is a fiscal loss.

Is medical insurance required to pay for "reproductive health care"? If so, these are expensive fiscal consequences of the proposals.

The proposals also yield enormous costs to the State in situations where persons or institutions refuse care against their medical "standard of care" but do not even require a license (creating a breeding ground for malpractice, and all of the expenses that come with it). With Medicaid, the state pays part of the bill, but may not get reimbursed the rest if the proposed bill is not followed. What about the "religious beliefs" of medical care providers. If, for example, Catholic hospitals are penalized, the State of Missouri could also be "fiscally" penalized.

What about the issue of prescribing pills to induce abortion---chemical abortion? Do these proposals mean that all care providers must not deny, restrict, or delay this form of abortion? Is the "government" discriminating against patients by not requiring care providers including pharmacists to dispense the pills? Can they be penalized by withholding of Medicaid payments?

The issue of federal Medicaid funds being disallowed has come up before. In December 2020 HHS and OCR announced that $200 million in federal Medicaid funds going to California in the upcoming quarter were being denied. This was due to the state illegally mandating that all health care plans subject to regulation by the California Department

AMERICAN OVERSIGHT

of Managed Health Care cover abortion without exclusion or limitation. Furthermore, if California did not come into compliance, additional disallowances would be imposed at a rate of $200 million per quarter. In a Vermont case, receipt of federal funds because of discrimination against an employee who refused to participate in abortions was threatened. I mention this because of the potential fiscal effect on the State of Missouri if one of these proposals was passed.

So as not to overlook the obvious, the proposals if passed would surely make abortions easier in this state, depriving the state of countless future taxpaying citizens. These persons, if allowed to live, would work, create and staff businesses, produce products, and in general contribute to the economy. A growing population encourages others to move here which in turn results in additional fiscal activity. And, although much of the above addresses Medicaid costs, since fewer workers will be around to contribute to the Medicare system, this system will be under fiscal stress also.

These are only some of the immediate, short-term, and permanent unfortunate fiscal consequences to State and local government if any of the proposals pass.

Thank you for considering this information.

David C. Drury
Attorney at Law
10004 Bellefontaine Road
St. Louis, Missouri 63137
314-868-7460
314-868-3122(fax)
NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri Lawyers notify all recipients of e-mail that. E-mail communication are not a secure method of communication. Any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa and may intercepted by improperly accessing your computer or my computer or even some computer unconnected to either of us. I am communicating to you via e-mail because you have consented to receive communications via this method. If you change your mind and want future communications to be sent in a different fashion, please let me know immediately. The information contained in this e-mail transmission is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of, including taking action in reliance upon, this transmission is strictly prohibited. If you have received this transmission in error, please destroy all copies of this communication and any attachments.

AMERICAN OVERSIGHT

Rachel U. Greszler, Senior Research Fellow in Economics, Budgets, and Entitlements, The Heritage Foundation provided the following information:

AMERICAN OVERSIGHT

The Heritage Foundation

Date: March 17, 2023

State Auditor's Office
State Capitol
201 West Capitol Ave.
Jefferson City, MO 65101

Dear Auditor Fitzpatrick,

Per Missouri's fiscal impact provisions, I have prepared the below fiscal note comments on the proposed ballot initiative "A Constitutional Amendment Concerning the Regulation of Abortion" as submitted to your office on March 9, 2023 as initiative petitions 24-077 through 24-087. My comments are my own and should not be construed as representing any official position of the Heritage Foundation.

Missouri is considering laws that would make abortion legal and easily accessible. The State should not take that step, simply because it would result in the death of thousands of innocent human beings. I offer this fiscal note to provide additional reasons that might persuade those who wrongly doubt that unborn human babies are persons.

By significantly reducing the number of births in the state, these laws would reduce the state's population growth and generate short- and long-term impacts on the state's output and its government finances. Abortion laws could also impact individuals' and families' personal finances, health, and wellbeing in ways that affect states revenues and expenses.

Population growth and economic growth go hand in hand so long as the necessary resources and infrastructure are in place to support that growth. Those resources and infrastructure are in place and the U.S. faces an unprecedented labor shortage. Recent declines in fertility rates threaten to reduce population growth and current and future economic growth. Moreover, government debt has created a situation in which the future wellbeing of current residents is dependent upon a growing population and workforce to pay for current debts and for unfunded obligations promised to retirees.

Since 2007, the total fertility rate in the U.S. declined from 2.11 births per woman right at replacement rate) to just 1.66 births per woman in 2021. Missouri's total fertility rate declined from 2.08 in 2007 to 1.60 in 2021.

Compared to current law (in which abortion is illegal in Missouri except in instances in which the woman's life is in danger or her health is severely compromised), the proposed laws could

AMERICAN OVERSIGHT

lead to an additional 2,000 to 9,000 abortions per year in Missouri, depending on how expansive abortion access would become.[1] Based on population projections from the Census Bureau, and assuming a one-for-one correlation between increased abortions and reduced population, the proposed abortion laws could reduce Missouri's projected population by 0.3 percent to 1.4 percent over the next 10 years and by 0.6 percent to 2.7 percent over the next 20 years.

The state needs to consider the following potential effects of abortion-induced population decline in its impact analysis:

A reduced labor force. Fewer births and a smaller population means a smaller future labor force. While proponents of abortion make the economic case that abortion enables women to work and earn more, the additional measurable work and earnings of women as a result of having an abortion is miniscule compared to the potential lifetime work and earnings of another human being. Moreover, while having a child can reduce mothers' work and earnings, it tends to increase fathers' work and earnings—a factor that is ignored in abortion advocates economic claims.

Healthcare strain. Already, the U.S. faces serious shortages of healthcare workers and the population is continuing to age. Young people (those who would be aborted over the coming decades as a result of the proposed laws) consume very little healthcare, and as they reach working age, they are net providers of healthcare. This means the proposed laws could exacerbate healthcare worker shortages, limit Missourians' access to healthcare, and potentially drive up the state's healthcare costs as shortages lead to higher prices. With Medicaid being Missouri's largest budgetary item (in FY 2022, Missouri's Medicaid spending was 74 percent greater than its K-12 education spending), and the state being limited by the federal government in its ability to reduce Medicaid spending, higher healthcare costs could impose significant budget constraints.

Reduced tax revenues. In the immediate future, fewer children born in Missouri could reduce sales and real estate tax revenues because households with children spend more and tend to live in higher-value housing. While the income tax revenues of women who have children could be lower if they work less after having children, the work and earnings of men tend to rise after they have children. In the decades following increased abortions, the absence of potentially tens of thousands of workers would lead to reduced income tax revenues. Although some state expenses are proportional to the number of residents and would decline over time, many expenses are not, and declining revenues would necessitate higher taxes or spending cuts.

Exacerbated unfunded pensions and other post-employment benefits. Depending on different assumptions and risk levels, Missouri has between $36 billion and $171 billion in unfunded pension and other post-employment benefits. That is money that has already been promised to public sector workers and retirees, but which has not been set aside to provide those benefits. The American Legislative Exchange Council estimates that Missouri's unfunded pension liabilities alone amount to $26,965 per capita in 2021, and these unfunded liabilities are

[1] Estimated increase based on the number of abortions in Missouri, as reported by the Missouri Department of Health and Senior Services and the Guttmacher Institute, reporting roughly 9,000 abortions around 2000-2001 and about 2,000 abortions around 2020-2021.

AMERICAN OVERSIGHT

continuing to grow. The fewer people Missouri has, the larger the per-capita liabilities become, and the harder it will be to raise taxes on workers and employers without them moving to other states. Among many consequences, economic analysis shows that unfunded pension obligations lead to lower real estate values, which would reduce property tax revenues.

Conclusion

It is an unquestionable fact that the U.S. Constitution requires all state and local governments to uphold Americans' most fundamental natural rights, including that of the right to life. Not counting unborn humans as living beings and treating abortion as an exercise in economic eugenics is an assault on these rights and values.

Even then, the fiscal and economic perspectives of abortion advocates are lacking sufficient economic rigor. I offer this fiscal analysis that provides good reasons to reject the proposed amendments on premises that abortion advocates may be able to accept.

The proposed laws to legalize and expand abortion access in Missouri warrant a properly conducted fiscal analysis. As a part of the debate, policymakers must consider how increased abortions will affect Missouri's population, workforce, fundamental services such as healthcare, the states tax revenues and expenditures, and Missouri's ability to make good on its unfunded pension and other post-employment benefit obligations.

Respectfully,

Rachel U. Greszler
Senior Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, DC 20002
Email: rachel.greszler@heritage.org

AMERICAN OVERSIGHT

****

**The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources:

Individuals 66%
Foundations 18%
Corporations 2%
Program revenue and other income 14%

The top five corporate givers provided The Heritage Foundation with **1% of its 2020 income**. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify and comment as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

AMERICAN OVERSIGHT

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri,** and the **University of Missouri**.

Fiscal Note Summary

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least $51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-077

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-078

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICA OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-079

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-080

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-081

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-082

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-083

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-084

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-085

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-086

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT

PUBLIC COMMENT FORM

RETURN TO:
Missouri Secretary of State
Elections Division
600 W. Main St.
Jefferson City, MO 65101

MISSOURI SECRETARY OF STATE
JOHN R. ASHCROFT

PHONE: (800) 669-8683
WEB: http://www.sos.mo.gov

CONTACT INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
Wagner	Ray	

STREET	CITY	STATE	ZIP CODE
207 W. High Street	Jefferson City	MO	65101

PHONE	EMAIL	ORGANIZATION
573-751-8807	Raymond.T.Wagner@ago.mo.gov	Missouri Attorney General's Office

PETITION NUMBER

2024-087

BRIEFLY PROVIDE YOUR COMMENT BELOW

Please see attached.

PLEASE NOTE THAT COMMENTS ARE "PUBLIC RECORDS," SUBJECT TO DISCLOSURE UPON REQUEST. YOUR COMMENT, INCLUDING NAME AND ADDRESS, MAY BE OBTAINED PURSUANT TO A SUNSHINE LAW REQUEST.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

April 7, 2023

Secretary John Ashcroft
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Ashcroft:

I write to provide comments on these initiative petitions. As chief legal officer of the State of Missouri, it is my duty and privilege to defend Missouri, its laws, and its citizens. One of the many privileges that come with this office is the power to defend and fight for Missouri's most vulnerable. Unborn children are our state's most defenseless and vulnerable group, and they deserve extra protection and care. These young ones are unable to speak for themselves, and it is my duty and great pleasure to speak on their behalf.

It has come to my attention that there is a coordinated effort to strip away unborn children's first and most fundamental right, their right to life. The most recent attack are these eleven separate initiative petitions. Drafted by a shadowy special interest group, these petitions seek to amend our state constitution to create new, vaguely defined "reproductive freedoms" that would strip away legal protection from unborn children. The founders of our country decried the rise of these kinds of special interest groups, warning they are "united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community*." Federalist No. 10. My office objects to this covert attempt to use misleading, vague language and euphemisms to overturn well-established law and strip thousands of children each year of their fundamental right to life.

Broadway Building
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Courts have recognized that an election authority is not required to place a facially unconstitutional initiative petition on the ballot. *See Reeves v. Kander*, 462 S.W.3d 853, 858 (Mo. App. W.D. 2015). At this stage, the proposed initiative petitions appear to be likely just that – facially unconstitutional.

Even if the initiative petitions were facially constitutional, any summary statement would have to disclose the enormous changes these petitions would cause. A summary statement must "convey the 'purpose' or 'primary objective' of a proposed initiative," *Archey v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012), "so that voters will not be deceived or misled," *Brown v. Carnahan*, 370 SW 3d 637, 654 (Mo. banc 2012). The summary statement "should address the 'central features,'" *Sedey v. Ashcroft*, 594 S.W.3d 256, 270 (Mo. App. W.D. 2020), and "accurately reflect the legal and probable effects of the proposed initiative." *Brown*, 370 SW 3d at 654. Here, the "central features" and "legal and probable effects" of these initiatives include the following serious issues:

- Reverses longstanding Missouri law protecting the right to life;[1]
- Eliminates antidiscrimination laws that prohibit race discrimination and sex discrimination.
- Infringes the right to religious liberty and conscience, including those of Missouri's health care professionals;
- Requires taxpayer funding of abortions;
- Requires taxpayer funding of sex-reassignment interventions without parental involvement and regardless of age.
- Undermines and removes parental rights and responsibilities for the care and safety of their children such as parental involvement and informed consent;
- Legalizes partial-birth abortion;
- Authorizes abortion of an unborn child up to the moment of birth;

[1] Missouri revisor of statutes - Revised statutes of Missouri, rsmo, Missouri law, Mo Law, Joint Committee on Legislative Research. (n.d.). Retrieved April 7, 2023, from https://revisor.mo.gov/main/PageSearch.aspx?tb1=Abortion&op=and&tb2=&idx=2

AMERICAN OVERSIGHT

- Creates a right to abortion beyond *Roe v. Wade*;
- Creates "reproductive freedom" as a fundamental right, which the U.S. Supreme Court has never recognized;

I encourage the Secretary of State to publish a final summary that accurately reflects the true magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

For reasons set forth below this effort to undermine the legal protection for unborn children is not only repugnant to the laws of Missouri but to the very foundation of what makes us great.

1. History of abortion in Missouri

Since our state's founding, Missourians have fervently sought to protect the right to life. Although the common law had long protected life, Missouri was the first state to do so by statute.[2] The state's resolve was reinforced just a decade later when the legislature revisited the issue and again continued to protect life.[3] And again, in 1907 the legislature clarified that all children were deserving of protection, even those "pre-quickening."[4] The trend in Missouri has always been toward enhancing protections for this vulnerable class of citizens.

Even after *Roe v. Wade*, Missouri fought tooth and nail, to do everything legally possible to protect life. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976) (Missouri defends several regulations of abortion including, requiring the physician to exercise professional care "to preserve the life and health of the fetus" and, failing such, deeming him guilty of manslaughter and making him liable in an action for damages). Before 2022, Missouri was one of the only states to successfully defend laws requiring abortionists to undertake safety measures like maintaining admitting privileges at a nearby hospital and

[2] 1825 Mo. Laws p. 283; see also, Mo. Rev. Stat., Art. II, §§ 10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion)
[3] Shorman, J. (2022, May 13). Inside Missouri's anti-abortion history before Roe v. Wade | the Kansas ... Retrieved April 7, 2023, from https://www.kansascity.com/news/politics-government/article261377422.html
[4] *Id.*

AMERICAN OVERSIGHT

maintaining referral agreements with other physicians. This office has continued to do so over the years, and I am committed to defending unborn children.

When *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* last year Missouri was again the **first state in the nation** to protect life.[5] Missouri's leadership in the fight has made it an enticing target for those who wish to undermine this fundamental protection, as evidenced by the eleven petitions at issue today. These petitions do not reflect the will of the people, and they are an attempt by a special interest group to use misleading, vague language to abuse Missouri's initiative petition process. These proposed amendments contradict Missouri's history; they are repugnant to Missouri's life-affirming values; they are antithetical to Missouri's long-standing public policy; they sow confusion designed to undermine Missourian's values; they do violence to the health and welfare of our state; and they use misleading, vague language to thwart the will of the people who, through their duly elected representatives, have already spoken on this issue.

2. Undermining public safety and conscience

"The traditional police power of the States is defined as the authority to provide for the public health, safety, and morals, and we have upheld such a basis for legislation." *Barnes v. Glen Theatre*, Inc., 501 U.S. 560 (1991). In recent polls, a majority of Missourians have indicated they do not support abortion. This support for life is also reflected by the representatives the people chose to elect. In Missouri, 77% are religious believers.[6] And most faith traditions strongly believe that abortion is the murder of a vulnerable human being that is created in God's image and imbued with divine purpose. To force any sincere believer to pay, support, or encourage abortions with tax dollars would violate fundamental conscience rights. These proposed amendments seek to require taxpayer dollars to be used to support abortion. These proposed amendments do not even make exceptions for nurses and

[5] Mo. AG. Op. 22-2022.
[6] Pew Research Center. (2022, June 13). *Religious landscape study*. Pew Research Center's Religion & Public Life Project. Retrieved April 6, 2023, from https://www.pewresearch.org/religion/religious-landscape-study/state/missouri/

AMERICAN OVERSIGHT

doctors. If enacted, these petitions would thus not only force everyday Missourians to pay for abortions, but also would force doctors and nurses to make a Hobson's choice between taking human life or losing their livelihood. That cannot stand.

The proposed amendments would not only enshrine abortion in the state's constitution but would also prohibit the state from "denying or interfering with" the newly created right to procure abortion. This language is vague, and advocates would use it to try to force the state to provide financial assistance for obtaining abortions—as other governments have been forced to do—which would be in direct conflict with the values and beliefs of most Missourians.

3. Undermining the policies of Missouri

The state has an interest in promoting life and protecting the unborn. *Dobbs*, 142 S.Ct. at 2284. That interest is clearly stated in § 1.205, RSMo. That statute, which has been in Missouri law for over 30 years, went into effect after Missouri took decisive action moments after *Dobbs*. It proclaims that "The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child." § 1.205 RSMo. All major cases addressing abortion, even though most were wrongly decided, also acknowledged that the state has a legitimate interest in protecting unborn children. *See Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that Missouri courts have consistently treated unborn children as persons when interpreting state criminal statutes wherein defendants may be charged with multiple counts of homicide when the victim is a pregnant mother), *See also Bailey v. State*, 191 S.W.3d 52 (Mo. App. 2005) (holding that a murder victim's non-viable unborn child was a person under the state's first-degree murder statute).

The eleven proposed petitions, if enacted, would remove the state's ability to protect the interest of the unborn child, a clear interest of the state. Proposed amendments 77, 78, and 79 do not identify any gestational limit whatsoever,

AMERICAN OVERSIGHT

meaning that children could lose their lives at any time during pregnancy – moments before birth. That radical policy is opposed by nearly all Americans. These proposed amendments could also be interpreted to conflict with state and federal bans on partial-birth abortion. Proposed amendments 80, 81, 82, and 84 give a perfunctory nod to some limits past 24 weeks gestation, however, 24 weeks is well past the point when children reach viability. These proposals would remove protection for unborn babies who would otherwise survive outside the womb. Indeed, they also could be interpreted to prohibit doctors from providing lifesaving healthcare to babies who are born alive. Amendment proposals 83, 85, 86, and 87, pay mere lip service to post-viability limits, leaving the determination of viability to the discretion of the abortionist despite their clear financial conflict of interest.

Moreover, the state has an interest in regulating the practice of medicine and safeguarding its ethics. For example, we do not allow doctors to kill healthy patients and harvest their organs to save others. That would be barbaric, and the state has sound moral and policy reasons to prohibit the practice. Nevertheless, the proposed petitions, if enacted, would enable abortions for the purpose of obtaining and selling the organs of children. Moreover, they would place legal handcuffs on the state's ability to protect its citizens by codifying a "strict scrutiny" standard of review for any proposed medical safeguards or health-and-safety requirements surrounding abortion. Strict scrutiny is normally reserved for fundamental rights like speech and life. In this case, however, the petitions' drafters have tried to weaponize the doctrine to strip the people of their ability not only to protect life, but also to protect basic health and safety.

These proposed amendments would give primacy to a newly created right to abortion: higher than freedom of speech, freedom of religion, the right to vote, the right to be free from unreasonable searches and seizures, and the right to life. It would place the determination of what is in the people's interest not in the people, and not with the legislature, but in the hands of a medical establishment that has well-documented biases when it comes to abortion. Such a scheme does not instill much confidence as we all remember the many times widely accepted clinical

AMERICAN OVERSIGHT

standard practice turned out to be false. These proposed amendments would make it nearly impossible for the people to regulate any aspect of abortion.

Furthermore, the proposed amendments, particularly numbers 78, 80, 82, 83, and 86, would nullify Missouri's long-standing prohibition on the use of taxpayer funds to pay for abortions. § 188.205 RSMo. The remaining proposals could also undermine this prohibition by using alternative legal theories, such as equal protection, privacy, or due process, and leveraging the newly established fundamental right to abortion. Additionally, the language used by all eleven of these proposals is so all-encompassing, amorphous, and vague that it is difficult to imagine what would not be covered by this "right." By creating such a fundamental right, those pushing these petitions would gain a powerful tool to challenge any restrictions on abortion, no matter how minimal or necessary they may be. This would result in an erosion of public trust and moral values, as the use of taxpayer funds to support abortion would go against the beliefs of Missourians who consider it to be an immoral act.

4. Undermining the health and welfare of Missourians

Abortion is not only morally repugnant and harmful to children, but it is also harmful to women's health. Research has shown that abortion is associated with negative physical and mental health outcomes for women.[7] In addition, abortion clinics in Missouri have a poor track record of health and safety compliance. For example, in 2018, health regulators were forced to shut down a clinic in Columbia, Missouri, ran by Colleen McNicholas because McNicholas had been inserting moldy equipment into women's wombs for months. The equipment contained a substance that her staff said was "most likely bodily fluid," as well as a separate "blackish gray substance" that McNicholas' staff identified as mold. McNicholas' staff admitted that they had "identified the problem" of mold "a couple of months previously" but that they had "continued to use the machine on patients after they

[7] Coleman, P. (2011). Abortion and mental health: Quantitative synthesis and analysis of research published 1995–2009. The British Journal of Psychiatry, 199(3), 180-186. doi:10.1192/bjp.bp.110.077230

AMERICAN OVERSIGHT

identified the issue."[8] Additionally, during previous litigation, Missouri discovered that abortionists routinely violate the medical standard of care. In gynecological settings, the standard of care requires practitioners to prearrange for a physician to be available to treat a woman if she experiences post-procedure complications. Abortionists in Missouri have a documented history of neglecting this basic duty. This neglect drastically increases the risks women face from chemical-induced abortions. And it does so in ways hard to capture by statistics. In the same litigation, abortionists also admitted under oath that they have long flouted their legal duty to report complications. Bringing these clinics back, as the petitions try to do, would only endanger women.

Apart from the health cost and priceless loss of life, which would be great, there is also a substantial economic cost to Missourians should any of these proposed amendments take effect. It is expected that an increase in abortions will naturally cause a rise in abortion-related injuries and complications that will strain the healthcare system. There is also a distinct possibility that as a result of these proposed amendments Missouri could forfeit federal funds as Medicaid matching requires compliance with federal law. For example, if the state cut off funds to a religious medical institution, which it would likely be required to do if the institution refused to respect the amorphous right to "reproductive freedom," HHS would likely refuse to provide matching funds. My office has been made aware that if this scenario happens Missouri stands to lose up to $12.5 billion.[9]

Missouri is likely to incur other costs which would include the increased cost to the state by having to litigate challenges to existing abortion and reproductive healthcare laws. Ultimately, the economic cost of these proposed amendments is potentially significant and should be considered when weighing the financial, moral, and legal impact of the proposed petitions.

---

[8] Statement of Deficiencies, Doc. 141-1, No. 2:16-cv-04313 (W.D. Mo. 2018).
[9] The Regulatory Review. (2021, February 25). *The fight over California's abortion coverage mandate*. The Regulatory Review. Retrieved April 6, 2023, from https://www.theregreview.org/2021/02/03/lee-fight-over-california-abortion-coverage-mandate/

AMERICAN OVERSIGHT

5. Undermining the democratic process

Finally, these proposed amendments undermine the democratic process. The initiative petition process is an important part of our democratic system, as it allows citizens to propose laws and amendments to the state constitution. However, these petitions are not the product of a grassroots movement, and they do not seek to use the initiative petition process honestly. Rather, these petitions stem from a well-funded special interest group with an agenda to force abortion on Missouri, and the language the petitions use is intentionally vague and misleading. The petitions fail to reflect the will of the people, as evidenced by recent polls showing that a majority of Missourians oppose abortion.

In short, we're being sold a bill of goods. While the initiative petition process, in this case, purports to be a legal process for creating a constitutional right to abortion, in reality, it is being weaponized by radical woke ideologues to subvert Missourian's voices and take away the people's right to pass the laws they find needed. Missourians have time and again elected representatives who are pro-life, who have in turn passed laws that have protected life, and they have done so transparently in a democratic way, rather than through sharp policy changes concealed in euphemisms and intentionally vague initiative petitions. Proponents of these amendments may argue, in Trojan-horse fashion, that they are trying to give the issue to the people, but the people have already spoken through their elected officials.

Furthermore, the proposed amendments set a dangerous precedent for the use of the initiative petition process by shadowy special interest groups through intentionally vague petitions. If these amendments are allowed to pass, it opens the door for well-funded special interests to use the same tactics to push for other controversial issues, bypassing the legislative process and the will of the people. This could lead to a breakdown in the democratic system and a loss of trust in the integrity of the initiative petition process. It is important to uphold the principles of democracy and allow elected representatives to fulfill their duty of representing their constituents and passing laws that reflect their values and beliefs. The

AMERICAN OVERSIGHT

initiative petition process should be reserved for truly grassroots movements, not well-funded interest groups pushing for their own agenda. The people of Missouri deserve better than to have their democratic rights undermined by these proposed amendments.

6. Conclusion

In conclusion, if any of these amendments are adopted:

a. Abortion will become a constitutional right in Missouri regardless of the conscientious objections of people of faith, medical providers, or the majority of Missourians who wish to protect life.

b. Other "reproductive freedoms" – an amorphous and undefined term – will become constitutional rights, unmoored from broader policy considerations and subject to the interpretational whims of abortion activists.

c. The state will be severely limited on how it can regulate any vague "reproductive freedom."

d. Abortion and other "reproductive freedoms" will receive a higher level of scrutiny than other fundamental rights, like the right to life.

e. Any regulation promulgated by the state is subject to the whims of what is considered "widely accepted clinical standard of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making, which essentially means no regulation of abortion or other "reproductive freedoms."

My office encourages the Secretary of State to publish a final summary that accurately reflects the shocking magnitude, scope, and impact of this initiative's change to Missouri's law and culture.

Sincerely,

ANDREW BAILEY
Attorney General

AMERICAN OVERSIGHT