

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

FILED

JAN 05 2012

BRENDA A. UMSTATTO
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

MISSOURI ROUNDTABLE FOR LIFE, INC.,)
FREDERIC N. SAUER, MISSOURI RIGHT)
TO LIFE, PAM FICHTER, and LAWYERS FOR)
LIFE, INC.,)

Plaintiffs,)

vs.)

STATE of MISSOURI, et al.,)

Defendants.)

Cause No. 11AC-CC00770

Division 4

AMENDED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Missouri Roundtable for Life, Inc., Frederic N. Sauer, Missouri Right to Life, Pam Fichter, and Lawyers for Life, Inc., for their Amended Petition against Defendants, respectfully state as follows:

Introduction

1. In this case, Plaintiffs seek a declaration that the contingency clause in SB No. 7 (96th General Assembly, 2011), commonly known as the “MOSIRA bill” (“SB No. 7”), renders Section A of that bill void because the contingency did not, and never can, occur. Plaintiffs further seek a permanent injunction to enjoin Defendants from implementing the void Section A of SB No. 7.

2. Specifically, the General Assembly deliberately conditioned the efficacy of Section A of SB No. 7 “upon the passage and approval by signature of the governor only of senate bill no. 8 . . . enacted during the first extraordinary session of first regular session of the ninety-sixth general assembly.” (SB No. 7 at § B.)

3. SB No. 8 failed to pass in the first extraordinary session of the first regular session of the 96th General Assembly and that extraordinary session has ended. The condition set forth in Section B of SB No. 7 therefore cannot ever be met.

4. Plaintiffs, as Missouri taxpayers and as organizations including Missouri taxpayers as their officers and members, will suffer harm if Section A of SB No. 7 is implemented and taxpayer funds are disbursed before these controversies are resolved by the Court.

5. Despite his constitutional duty to uphold the laws of Missouri, the Governor has stated his intention to implement, and to have the other Defendants implement, the void Section A of SB No. 7.

Parties

6. Plaintiff Missouri Roundtable for Life, Inc. (“Missouri Roundtable”) is a Missouri non-profit corporation in good standing. Missouri Roundtable’s officer, directors, and members are Missouri residents and taxpayers.

7. Plaintiff Fred N. Sauer (“Sauer”) is a Missouri resident and taxpayer and is the President and a Director of Missouri Roundtable.

8. Plaintiff Missouri Right to Life is a Missouri non-profit corporation in good standing. Various officers, directors, and members of Missouri Right to Life are Missouri residents and taxpayers.

9. Plaintiff Pam Fichter (“Fichter”) is a Missouri resident and taxpayer and is the President and a Director of Missouri Right to Life.

10. Plaintiff Lawyers for Life, Inc. (“Lawyers for Life”) is a Missouri non-profit corporation in good standing. Various officers, directors, and members of Lawyers for Life are Missouri residents and taxpayers.

11. Defendant State of Missouri (the “State”) is a body politic organized and existing under the Missouri Constitution and the United States Constitution.

12. Defendant Jeremiah W. (Jay) Nixon is the duly elected Governor of the State of Missouri (“Governor”) and is sued in his capacity as such.

13. Defendant Clint Zweifel is the duly elected Treasurer of the State of Missouri (“Treasurer”) and is sued in his capacity as such.

14. Defendant Office of Treasurer (“Office of Treasurer”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, §15. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Treasurer and the Office of Treasurer.

15. Defendant Kelvin Simmons is the duly appointed Commissioner of Administration of the State of Missouri (“Commissioner of Administration”) and is sued in his capacity as such.

16. Defendant Office of Administration (“Office of Administration”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 50. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Commissioner of Administration and the Office of Administration.

17. Defendant David Kerr is Director of Economic Development of the State of Missouri (“Director of Economic Development”) and is sued in his capacity as such.

18. Defendant Department of Economic Development (“DED”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 36(a). The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Director of Economic Development and the DED.

19. Defendant Alana M. Barragán-Scott is Director of Revenue of the State of Missouri (“Director of Revenue”) and is sued in her capacity as such.

20. Defendant Department of Revenue (“DOR”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 22. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Director of Revenue and the DOR.

Plaintiffs’ Standing as Associations and as Taxpayers

21. Plaintiff Missouri Roundtable has standing to assert the interests of its members because its members, who are Missouri taxpayers, would have standing to institute this action; the interests that Missouri Roundtable seeks to protect are germane to its purpose; and neither the asserted claims nor the requested relief requires the participation of the individual members.

22. Plaintiff Sauer has standing as a resident and taxpayer of Missouri and as an officer and director of Plaintiff Missouri Roundtable. Sauer challenges expenditures of public funds and the potential increased levy in taxes that may result if this controversy is not resolved.

23. Plaintiff Missouri Right to Life has standing to assert the interests of its members because its members, who are Missouri taxpayers, would have standing to institute this action; the interests that Missouri Right to Life seeks to protect are germane

to its purpose; and neither the asserted claims nor the requested relief requires the participation of the individual members.

24. Plaintiff Fichter has standing as a resident and taxpayer of Missouri and as an officer and director of Plaintiff Missouri Right to Life. Fichter challenges expenditures of public funds and the potential increased levy in taxes that may result if this controversy is not resolved.

25. Plaintiff Lawyers for Life has standing to assert the interests of its members because its members, who are Missouri taxpayers, would have standing to institute this action; the interests that Lawyers for Life seeks to protect are germane to its purpose; and neither the asserted claims nor the requested relief requires the participation of the individual members.

General Allegations

26. Plaintiffs' rights, status, or other legal relations are affected by Section A of SB No. 7 and by the actions of the Governor and the remaining Defendants to implement Section A of SB No. 7, as more fully set forth in this Petition.

27. An actual controversy, ripe for adjudication, currently exists between Plaintiffs and Defendants as to whether Section A of SB No. 7 is void and a legal nullity. Plaintiffs lack an adequate remedy at law.

28. Plaintiffs therefore seek a declaratory judgment under Rule 87 of the Missouri Rules of Civil Procedure and Mo. Rev. Stat. §§ 527.010, *et seq.*, to terminate this controversy and remove uncertainty.

29. In its first extraordinary session, the 96th General Assembly of Missouri passed SB No. 7, which purports to authorize the expenditure of public funds. An

accurate copy of the Senate Substitute for the Senate Committee Substitute for Senate Bill No. 7, as Truly Agreed to and Finally Passed (i.e., SB No. 7 as defined in this Petition), is attached hereto as **Exhibit 1**.

30. Section B of SB No. 7 contains the following contingency clause:

Section A of this act relating to science and innovation *shall not become effective except upon the passage and approval by signature of the governor only of senate bill no. 8* relating to taxation and enacted during the first extraordinary session of first regular session of the ninety-sixth general assembly.

(SB No. 7 at § B) (emphasis added).

31. SB No. 8 failed to pass in the first extraordinary session of the first regular session of the 96th General Assembly and that extraordinary session has ended. The condition in Section B of SB No. 7 therefore cannot ever be met.

32. Further, the history of SB No. 7 and its various predecessor bills in the 2011 legislative session demonstrates that neither SB No. 7 nor any of its predecessor bills would have passed *but for* the addition of the contingency clause. For example, the predecessors to SB No. 7 in the 2011 regular session did not contain such contingency clauses and each of those bills failed to pass or died at various stages of the legislative process. Further, both the “Introduced” version and “Senate Committee Substitute” version of SB No. 7 did not contain a “Section B” contingency clause. The “Section B” clause was placed in SB No. 7 by means of the Senate Substitute for the Senate Committee Substitute. Only after adding the contingency clause did the Senate Substitute for the Senate Committee Substitute of SB No. 7, as amended, garner enough votes to pass both the House and Senate.

33. The General Assembly delivered SB No. 7 to the Governor on or about October 6, 2011.

34. On or about October 21, 2011, the Governor signed SB No. 7.

35. Notwithstanding the failure of the contingency in Section B of SB No. 7 to occur, and the impossibility of that contingency ever occurring in the future, and notwithstanding his constitutional duty to “take care that the laws are distributed and faithfully executed,” Mo. Const. Art. IV, § 2, on or about October 21, 2011, the Governor issued a press release stating that “Senate Bill 7 contains a clause that requires its effective date be contingent on the passage of an unrelated bill. Contingency clauses contained in legislation have been voided in the past, and *ultimately a court may have to determine the effect, if any, of the contingency clause* contained in Senate Bill 7. *With the signing of the bill, the State will initiate steps toward the implementation of Senate Bill 7.*” (emphasis added). An accurate copy of this press release is attached hereto as **Exhibit 2.**

36. Though he still intends for Defendants to move forward with implementing Section A of SB No. 7, the Governor later recognized the “uncertainty” created by the contingency clause in Section B of SB No. 7, issuing, in conjunction with signing ceremonies on or about November 9, 2011, a press release stating: “Senate Bill 7 contains a clause stating that its effective date is contingent on the passage of an unrelated bill. Gov. Nixon said he will work with the General Assembly during the 2012 legislative session for a simple fix to eliminate any uncertainty caused by that language.” An accurate copy of this press release is attached hereto as **Exhibit 3.**

37. Plaintiffs, however, maintain that the failure of the contingency in Section B of SB No. 7 to occur, and the impossibility that it will ever occur, renders Section A of SB No. 7 void and a legal nullity.

**A Controversy Exists Between Plaintiffs and
Defendants as to the Validity of Section A of SB No. 7**

38. Under Missouri law, contingency clauses in legislation are valid and enforceable.

39. Plaintiffs maintain that under Missouri law, the contingency clause in Section B of SB No. 7 is valid and enforceable and renders Section A of SB No. 7 void and a legal nullity.

40. The Governor, however, maintains that the contingency clause in Section B of SB No. 7 somehow should be voided and that perhaps “a court may have to determine the effect, if any, of the contingency clause contained in Senate Bill 7.” (Exhibit 2.)

41. Notwithstanding his acknowledgement that SB No. 7 in fact contains a contingency clause, that the contingency in fact did not occur, and that the contingency clause renders Section A of SB No. 7 void and a legal nullity, the Governor intends that Defendants take steps to implement Section A of SB No. 7. (*Id.*)

42. Implementation of Section A of SB No. 7 is not only an *ultra vires* exercise of power by Defendants but also an unconstitutional and wasteful expenditure of government resources that harms Plaintiffs as taxpayers of the State.

43. Plaintiffs lack an adequate remedy at law and therefore, under Rule 92 of the Missouri Rules of Civil Procedure and Mo. Rev. Stat. §§ 526.010, *et seq.*, seek to have the Court permanently enjoin Defendants, and each of them, and all those in active

concert or participation with them, from taking any action to implement or otherwise effectuate any provisions of Section A of SB No. 7.

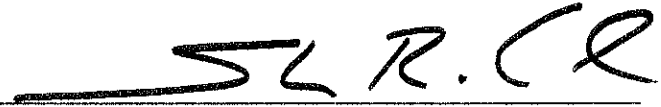
WHEREFORE, Plaintiffs respectfully pray that the Court enter its judgment:

- (A) Declaring that the contingency clause in Section B of SB No. 7 is valid and enforceable;
- (B) Declaring that the contingency set forth in that clause – the passage of SB No. 8 by the General Assembly in the first extraordinary session of the first regular session of the 96th general assembly – did not, and because such extraordinary session is over, cannot ever, occur;
- (C) Declaring that section A of SB No. 7 is void and a legal nullity;
- (D) Permanently enjoining Defendants, and each of them, and all those in active concert or participation with them, from taking any action to implement or otherwise effectuate any provisions of Section A of SB No. 7;
- (E) Awarding Plaintiffs their attorneys' fees, expenses, and costs pursuant to, *inter alia*, Mo. Rev. Stat. § 527.100; and
- (F) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Dated: January 4, 2012

Respectfully submitted,

CLARK LAW FIRM, LLC



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