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STATE OF MISSOURI)

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CITY OF ST. LOUIS)

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22ND JUDICIAL CIRCUIT
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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

The Reverend Traci Blackmon, *et al.*,)

Petitioners,)

vs.)

State of Missouri, *et al.*,)

Respondents.)

Case No. 2322-CC00120

Division No. 18

JUDGMENT AND ORDER

The Court has before it the Missouri Attorney General Andrew Bailey and the State of Missouri's (collectively, "the State") Motion to Strike and Motion to Dismiss the Cross-claim Petition of Respondent/Cross-Claimant Jean Peters Baker in her official capacity as Prosecuting Attorney of Jackson County, Missouri ("Peters Baker").¹ The Court now rules as follows.

On January 19, 2023, Petitioners brought this case seeking, among other things, injunctive and declaratory relief regarding the restriction and regulation of abortions in Missouri. Petitioners were granted leave to file their First Amended Petition on March 27, 2023. In their First Amended Petition, Petitioners challenge several statutory abortion restrictions, including Sections 188.017, 188.021(2), 188.027, 188.038, 188.039, 188.056, 188.057, 188.058, 188.065, 188.075, and

¹ The Court notes all of the other prosecutors initially named as Respondents in Petitioners' first amended petition, including the Prosecuting Attorney for Boone County, the Prosecuting Attorney for Greene County, the Prosecuting Attorney for Jasper County, the Prosecuting Attorney for St. Charles County, and the Circuit Attorney for the City of St. Louis, have sought to be dismissed from this case and have been dismissed from this case. Peters Baker is the sole remaining prosecutor respondent, and she has not sought to be dismissed, but instead has filed the cross-claim at issue here.

188.375 RSMO, and seek both a declaration that they violate the Missouri Constitution's Establishment Clauses and an injunction against their enforcement.

On June 13, 2023, Peters Baker filed her Cross-claim Petition for Declaratory Judgment against the State of Missouri and the Missouri Attorney General seeking declaratory relief concerning the constitutional validity of the criminal laws she is tasked with enforcing ("the Cross-claim Petition"). Peters Baker argues that Missouri statutes criminalizing abortion, Sections 188.017, 188.026, 188.030, 188.056, 188.057, 188.058, 188.075, and 188.375 RSMo, may be unconstitutional and seeks guidance from this Court. Peters Baker contends that her interest in resolving this uncertainty is real, substantial, and presently existing.

First, the State moves to strike the Cross-claim Petition because it is untimely and because it is not transactionally related to the underlying Petitioners' claims.

Here, Peters Baker filed an answer on April 6, 2023. Then, on June 13, 2023, Peters Baker separately filed the Cross-claim Petition. The State argues that a cross-claim may be filed only as part of an answer, and that Peters Baker's failure to do so is fatal to her claims. To the extent necessary, Peters Baker has sought leave to amend her Answer to assert her cross-claim. "A trial court has broad discretion to grant a party leave to amend an answer." Sloan-Odum v. Wilkerson, 176 S.W.3d 723, 725 (Mo. App. E.D. 2005). "However, it is an abuse of discretion to not grant such leave when justice so requires." Id. The Court finds that if the Cross-claim Petition was not otherwise deficient, justice, as contemplated by Rule 55.33(a), would require granting leave to amend. Accordingly, this argument is without merit in this case.

The State also argues that parts of the Cross-claim should be struck because they lack a transactional relationship with Petitioner's underlying claims as required by Rule 55.32(f).

Rule 55.32(f) states:

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

In this case, the Cross-claim Petition seeks declaratory judgment regarding Missouri statutes that were the subject of the original action's declaratory judgment claims. While the claims in the First Amended Petition and the Cross-claim Petition are distinct, they are not so distinct as to convince the Court that these claims should be struck for failure to comply with Rule 55.32(f). Accordingly, the State's motion to strike will be denied.

Next, the State argues that this Court should dismiss the Cross-claim Petition because Peters Baker lacks standing and because her claims are not ripe.

A motion to dismiss for failure to state a claim on which relief can be granted under Rule 55.27(a)(6) is solely a test of the adequacy of the petition. Bromwell v. Nixon, 361 S.W.3d 393, 398 (Mo. banc 2012). The Court assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. banc 2001). No attempt is made to weigh any facts as to whether they are credible or persuasive. Id. Instead, the petition is reviewed to see whether the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. Id.

"A declaratory judgment action requires a judiciable controversy." Trophy Room v. City of St. Louis, 534 S.W.3d 340, 350 (Mo. App. E.D. 2017). "A case presents a justiciable controversy if: (1) the plaintiff presents a real, substantial, presently existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation;

(2) the plaintiff has a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) the controversy is ripe for judicial determination; and (4) the plaintiff has an inadequate remedy at law.” Id. at 351 (citing Schaefer v. Koster, 342 S.W.3d 299, 300 (Mo. banc 2011)).

The State argues that the Cross-claim Petition should be dismissed in its entirety because Peters Baker lacks standing for four reasons: Peters Baker seeks a prohibited advisory opinion; Peters Baker is not injured by the alleged due process and equal protection violations because she does not have due process and equal protection rights in her official capacity as Jackson County Prosecutor; Peters Baker lacks third-party standing to sue on behalf of women and physicians and is not independently injured by the alleged due process and equal protection violations; and Peters Baker does not have an actual or imminent injury.

Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action. E. Missouri Laborers Dist. Council v. St. Louis Cnty., 781 S.W.2d 43, 45–46 (Mo. banc 1989). Standing requires that a party seeking relief must have a legally cognizable interest in the subject matter and that such party must also have a threatened or actual injury. Id. In addition, a plaintiff must have an actual and justiciable interest susceptible of protection. Metro Auto Auction v. Dir. of Revenue, 707 S.W.2d 397, 400 (Mo. banc 1986). The doctrine of standing is related to the doctrine which prohibits advisory opinions. Id. The party seeking relief has “the burden to establish that they had standing to maintain their lawsuit.” Borges v. Mo. Pub. Entity Risk Mgmt. Fund (MOPERM), 358 S.W.3d 177, 181 (Mo. App. W.D. 2012).

“A party bringing litigation establishes standing by showing a personal stake in the litigation that arises from a threatened or actual injury.” Roberts v. BJC Health Sys., 391 S.W.3d

433, 438 (Mo. banc 2013). “Plaintiffs must show they have some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome.” Id.

The purpose of standing is to prevent advisory opinions. Mo. Dep’t of Nat. Res. v. Hickory Neighbors United, Inc. (In re Trenton Farms RE, LLC), 603 S.W.3d 286, 293 (Mo. banc 2020).

“An opinion is advisory if there is no justiciable controversy, such as if the question affects the rights of persons who are not parties in the case, the issue is not essential to the determination of the case, or the decision is based on hypothetical facts.” Id. “[A]n opinion resolving an issue which the adversaries have no standing to raise is necessarily advisory.” State ex rel. Williams v. Marsh, 626 S.W.2d 223, 227 (Mo. banc 1982).

In this case, Peters Baker asserts she has a unique status as a minister of justice. As a minister of justice, Peters Baker claims she has a duty to go beyond merely seeking convictions and legislatively authorized sentences in individual cases, and to think about the delivery of criminal justice on a systemic level, promoting criminal justice policies that further broader societal ends. The Court has no disagreement with that belief, and, in fact, the Court suspects that is the major reason prosecutors are vested with such expansive discretion. “[A] prosecutor has broad discretion to determine when, if, and how criminal laws are to be enforced, and that this decision is seldom subject to judicial review.” State v. Honeycutt, 96 S.W.3d 85, 89 (Mo. banc 2003)(citing State v. Gardner, 8 S.W.3d 66 (Mo. banc 1999); State v. Smith, 422 S.W.2d 50 (Mo. 1967)).

Peters Baker alleges in the Cross-claim Petition that she has the authority to enforce the criminal provisions in Chapter 188 and to pursue prosecutions against physicians and women but that numerous aspects of Chapter 188 are so vague as to make it impossible to interpret the law’s

parameters. In addition, Peters Baker alleges that she believes the criminal provisions in Chapter 188 conflict with the principles of due process and equal protection of the laws guaranteed by the Missouri Constitution. Peters Baker does not allege that any of these issues are presently before her. Peters Baker does not allege that any individuals in Jackson County have violated the Missouri statutes criminalizing abortion or that such a violation is imminent. Peters Baker does not allege that she is currently considering whether to exercise her discretion to prosecute one of the provisions at issue. The Court finds that Peters Baker has not met her burden here of establishing standing because she has not shown the necessary threatened or actual injury.

Peters Baker relies on Wilson v. City of St. Louis, 662 S.W.3d 749, 754 (Mo. 2023), and City of St. Louis v. State, 643 S.W.3d 295 (Mo. banc 2022), in support of her argument that she has met her burden to establish standing here. The Court finds that both cases are distinguishable. In Wilson v. City of St. Louis, Alderman Jeffrey Boyd and the City of St. Louis filed cross-claims challenging the constitutional validity of certain parking statutes. 662 S.W.3d at 754. The parking statutes at issue created “a parking commission and creating powers and duties for municipal offices in the City of St. Louis” and cross-claimants sought to prevent the creation of the commission. Id. at 758. In City of St. Louis v. State, the City of St. Louis, St. Louis County, and Jackson County filed a declaratory judgment action seeking a declaration that the Second Amendment Preservation Act, sections 1.410 through 1.485 RSMo, was unconstitutional. 643 S.W.3d at 297. In that case, standing was not at issue, but rather ripeness, the Missouri Supreme Court found that the case was ripe in part because “Plaintiffs currently are defending themselves in the pending lawsuits...” Id. at 301. Both of the cases relied on by Plaintiffs are distinguishable from the instant case in that they involve allegations of threatened or actual injury.

While Peters Baker has expansive prosecutorial discretion and a concomitant duty to ponder the delivery of criminal justice on a systemic level, the Court has no discretion to issue an advisory opinion or to depart from controlling precedent. The Cross-claim Petition is based on hypothetical facts of the type that would result in an impermissible advisory opinion. See Mo. Dep't of Nat. Res. v. Hickory Neighbors United, Inc. (In re Trenton Farms RE, LLC), 603 S.W.3d at 293. As a result, the Court must grant the State's motion to dismiss for lack of standing.

In addition, there is a separate reason the Cross-claim Petition must be dismissed. The State argues it should be dismissed for lack of ripeness because the Cross-claim Petition fails to plead any facts suggesting that Peters Baker currently is enforcing or is likely to enforce the Missouri statutes criminalizing abortion.

"Ripeness is determined by whether the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character." Schweich v. Nixon, 408 S.W.3d 769, 774 (Mo. banc 2013)(citing Mo. Health Care Ass'n v. Attorney Gen. of Mo., 953 S.W.2d 617, 621 (Mo. banc 1997)). "A court cannot render a declaratory judgment unless the petition presents a controversy ripe for judicial determination." Id. "In order that a controversy be ripe for adjudication a sufficient immediacy must be established." Buechner v. Bond, 650 S.W.2d 611, 614 (Mo. banc 1983). "Ripeness does not exist when the question rests solely on a probability that an event will occur." Id.; See also Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 26 (Mo. banc 2003).

"[A] pre-enforcement challenge to a law is sufficiently ripe to raise a justiciable controversy when: '(1) the facts necessary to adjudicate the underlying claims [are] fully

developed and (2) the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute.” Tupper v. City of St. Louis, 468 S.W.3d 360, 370 (Mo. banc 2015)(citing Foster v. State, 352 S.W.3d 357, 360 (Mo. banc 2011)).

In this case, the record before the Court does not support a finding that Peters Baker does not intend to enforce the laws at issue. However, the Court finds that the claims alleged in the Cross-claim Petition are still not ripe for judicial determination. The Cross-claim Petition does not allege a presently existing conflict with sufficient immediacy. As previously stated, the Cross-claim Petition does not allege that any individuals in Jackson County have violated the Missouri statutes criminalizing abortion or that such a violation is imminent.

Peters Baker relies on City of Nevada v. Welty, 203 S.W.2d 459 (Mo. 1947) in support of her argument that her alleged cross-claims are ripe. In that case, the City of Nevada sought a declaration as to the validity of an ordinance under which it intended to declare certain stock pens to be a nuisance and to order their removal. Id. at 460. City of Nevada is distinguishable in that it involved declaratory judgment regarding an ordinance that had been violated and which the petitioner intended to enforce should the ordinance be declared valid. Id. The Court finds that the case is inapposite to the instant matter because no violation of the Missouri statutes criminalizing abortion is alleged here.

The Court finds that it must grant the State’s motion to dismiss.

JUDGMENT

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Missouri Attorney General Andrew Bailey and the State of Missouri’s Motion to Dismiss Respondent/Cross-

Claimant Jean Peters Baker's Cross-claim Petition is hereby GRANTED.

The Motion to Strike is denied.

Respondent/Cross-Claimant Jean Peters Baker's Cross-claim Petition is hereby dismissed.

SO ORDERED:



Jason Sengheiser, Judge

Dated: September 29, 2023