

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

COMPREHENSIVE HEALTH OF)
PLANNED PARENTHOOD GREAT)
PLAINS, et al.,)
Plaintiffs,)
v.)
STATE OF MISSOURI, et al.,)
Defendants.)

Case No. 2416-CV31931
Division 3

ORDER

NOW on this day, the Court takes up Plaintiffs’ Motion to Certify a Defendant Class, filed on November 6, 2024.

The Court held a hearing on Plaintiffs’ Motion to Certify a Defendant Class on January 31, 2025. Plaintiffs Comprehensive Health of Planned Parenthood Great Plains and Planned Parenthood Great Rivers-Missouri appeared by Eleanor Spottswood, Esq. and Gillian Wilcox, Esq. Defendants State of Missouri, Michael Parson,¹ Andrew Bailey, Department of Health and Senior Services, Paula Nickelson, Missouri Division of Professional Registration - Healing Arts, Jade James-Halbert, Dorothy Munch, Jeffrey Carter, Ian Fawks, Naveed Razzaque, Mark Taormina, Christopher Wilhelm, Missouri Division of Professional Registration – Board of Nursing, Julie Miller, Trevor Wolfe, Margaret Bultas, Bonny Kehm, Courtney Owens and Denise Williams (hereinafter “State Defendants”) appeared by Joshua Divine, Esq. and Michael Patton, Esq. Defendant Melesa Johnson appeared by D. Ryan Taylor, Esq. John Tyrrell, Wright County Prosecuting Attorney, appeared in person. Parke Stevens, Texas County Prosecuting Attorney, appeared in person. Matthew Becker, Franklin County Prosecuting Attorney, appeared in person.

Tim Thompson, Saline County Prosecuting Attorney, appeared in person. After reviewing the

¹ Mike Kehoe was sworn in as the Missouri Governor on January 13, 2025. To date, there has been no request to substitute him for the previous Missouri Governor, Michael Parson.

Court's file and hearing argument of counsel and being apprised on the relevant law, the Court finds that Plaintiffs' Motion should be and is hereby, GRANTED.

PROCEDURAL HISTORY

1. On December 5, 2024, this Court entered an order memorializing rulings during the December 4, 2024 preliminary injunction hearing. That Order granted leave for State Defendants to file an opposition to Plaintiffs' Motion to Certify a Defendant Class out of time, and granted Plaintiffs' oral Motion to Conditionally Certify a Defendant Class, which named former Jackson County Prosecuting Attorney, Jean Peters Baker, as the class representative.

2. On December 13, 2024, Plaintiffs filed a Notice on Members of Conditional Defendant Class certifying that notice had been given to class members via electronic mail or first class mail. The prosecuting attorneys for Wright, Texas, and Franklin Counties (hereinafter "objecting Prosecutors") subsequently filed their objections to the Motion to Certify a Defendant Class.

3. On January 8, 2025, Melesa Johnson (hereinafter "Johnson"), Jackson County Prosecuting Attorney, filed her Motion to Substitute Party in light of her recent election to the office. This Motion was granted on January 14, 2025 and Johnson was substituted in for former Jackson County Prosecuting Attorney, Jean Peters Baker.

4. On January 14, 2025, the Court entered an Order for Hearing on the Motion to Certify a Defendant Class and ordered Plaintiffs to mail notice of hearing to all possible class members no later than 10 days before the hearing.

5. On January 29, 2025, Plaintiffs certified they had mailed notice to all possible class members via either certified USPS mail or FedEx.

6. During the hearing held on January 31, 2025, the Court heard argument from Plaintiffs, State Defendants, Johnson, objecting Prosecutors, as well as the Saline County Prosecuting

Attorney, Tim Thompson.² Thereafter, the Court took the Motion to Certify a Defendant Class under advisement.

LEGAL ANALYSIS

7. “A class action is designed to promote judicial economy by permitting the litigation of the common questions of law and fact of numerous individuals in a single proceeding.” *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 (Mo. banc 2004).

8. Whether a class should be certified is “based primarily upon the allegations in the petition.” *Elesa v. U.S. Eng’g Co.*, 463 S.W.3d 409, 414 (Mo. App. 2015); see also *Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 224 (Mo. App. 2007) (“the court assumes the named plaintiffs’ allegations are true” for class certification purposes).

9. In Missouri state court, a class is properly certified if the requirements of Missouri Supreme Court Rule 52.08(a)(1)–(a)(4) and the requirements of either Rule 52.08(b)(1), 52.08(b)(2), or 52.08(b)(3) are satisfied.

10. Because the text of Rule 52.08 is essentially the same as Federal Rule of Civil Procedure 23 (“FRCP 23”), Missouri courts have long held that federal court interpretations of FRCP 23 are relevant and may be considered in the determination of class certification questions. See *Kendrick*, 142 S.W.3d at 735 n.5; *Koehr v. Emmons*, 55 S.W.3d 859, 864 n.7 (Mo. App. 2001).

11. In similar cases, both the Western District of Missouri and the Jackson County Circuit Court have found the certification requirements satisfied by the same Defendant Class proposed here. See *Turtle Island Foods, SPC v. Richardson*, 425 F. Supp.3d 1131, 1138 (W.D. Mo. 2019) (noting that, “because plaintiffs are challenging the constitutionality of the statute and because all

² The argument from the objecting Prosecutors focused primarily on the adequacy of representation by Melesa Johnson and her counsel, rather than the propriety of the Defendant Class proposed by Plaintiffs. Further, there was no formal request for the court to create a subclass nor a request for another named individual to serve as the class representative.

115 prosecuting attorneys in Missouri are charged with prosecuting violations of this statute and defending its constitutionality, plaintiffs have met the requirements to certify the Missouri Prosecuting Attorneys as a defendant class under Fed.R.Civ.P. 23(b)(2)"); *Mo. Ass'n of Sch. Librs. v. Baker*, No. 2316-CV05732 (16th Jud. Cir. Ct. June 23, 2023) (finding that a defendant class of Missouri Prosecuting Attorneys was appropriate in case challenging the constitutionality of a state statute carrying criminal penalties).

12. To satisfy the requirements of Rule 52.08(a), Plaintiffs must demonstrate that the proposed Defendant Class satisfies the following requirements: “(1) the class is so numerous that joinder of all members is impracticable [(numerosity)]; (2) there are questions of law or fact common to the class [(commonality)]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [(typicality)]; and (4) the representative parties will fairly and adequately protect the interests of the class [(adequacy)].” Rule 52.08(a)(1)–(a)(4).

13. The proposed Defendant Class satisfies Rule 52.08(a) because (1) the size of the proposed Defendant Class—115 Missouri prosecutors—renders joinder impracticable; (2) the questions raised by this suit are common to all members of the putative class, and a decision by this Court on those common questions would resolve class claims simultaneously; (3) the named prosecutor’s claims and interests are aligned with and typical of those of the putative class members; and (4) the named prosecutor and their counsel will adequately represent the class.

14. The numerosity requirement under Rule 52.08(a)(1) is satisfied when the class is “so numerous that joinder of all members is impracticable.” Rule 52.08(a)(1). To determine whether Rule 52.08’s numerosity requirement has been met, courts examine “the number of persons in the proposed class, the nature of the action, the size of the individual claims, and the inconvenience of

trying individual claims.” *M.B. by Eggemeyer v. Corsi*, 327 F.R.D. 271, 278 (W.D. Mo. 2018) (citing *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 561 (8th Cir. 1982)).

15. While “[n]o arbitrary rules regarding the necessary size of classes have been established,” *Paxton*, 688 F.2d at 559, “a forty-member class is often regarded as sufficient to meet the numerosity requirement.” *Orr v. Shicker*, 953 F.3d 490, 498 (7th Cir. 2020) (quoting *Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 859 (7th Cir. 2017)) (also explaining that “there is no magic number that applies to every case”); see also, *Bradford v. AGCO Corp.*, 187 F.R.D. 600, 604 (W.D. Mo. 1999) (“This Court finds that a class of twenty to sixty-five members is sufficiently numerous under Rule 23.”); *Esler v. Northrop Corp.*, 86 F.R.D. 20, 34 (W.D. Mo. 1979) (certifying class of 186 members).

16. The proposed Defendant Class satisfies the numerosity requirement because joinder of all 115 prosecuting attorneys who are class members would be impracticable.

17. Commonality is satisfied when “there are questions of law or fact common to the class.” Rule 52.08(a)(2).

18. Courts have interpreted this requirement as being satisfied so long as there is at least one question of law or fact which is common to the class. *Elsea*, 463 S.W.3d at 419 (“[E]ven a single [common] question will do.”) (quoting I Rubenstein, *Newberg on Class Actions*, § 3:20). The commonality requirement “is written in the disjunctive, and hence, the common question may be one of fact or law and need not be one of each.” *Elsea*, 463 S.W.3d at 418 (emphasis in original).

19. The commonality requirement is satisfied here because the sole question of this case is common to the entire proposed Defendant Class: whether the challenged laws are constitutional.

Each prosecuting attorney has taken an oath of office to uphold the laws of the State of Missouri,

and charged with enforcing each of the challenged laws in the same way as every other prosecuting attorney.

20. A determination regarding constitutionality will apply identically to the entire Defendant Class, affecting their authority to enforce the statute. See, e.g., *Turtle Island Foods*, 425 F. Supp.3d at 1137; see also § 56.060.1, RSMo (“Each prosecuting attorney shall commence and prosecute all civil and criminal actions in the prosecuting attorney’s county . . .”).

21. As in *Turtle Island Foods*, “the commonality requirement is met, because all of the prosecuting attorneys share the common defense that the statute[s are] constitutional and a determination regarding the constitutionality of [the challenged laws] would apply to all the prosecuting attorneys and affect whether they could prosecute actions under that statute or not.” 425 F. Supp.3d at 1137.

22. The commonality requirement is satisfied because there are questions of law and fact common to each member of the proposed Defendant Class.

23. The typicality requirement is met where “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Rule 52.08(a)(3). See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011) (noting that “the commonality and typicality requirements of [class certification] tend to merge.”)

24. As stated above, the issue in this case is the constitutionality of the challenged laws.

25. In her role as the Jackson County Prosecuting Attorney, Johnson is charged with enforcing criminal provisions contained in the challenged laws, as are all members of the proposed Defendant Class.

26. The defenses available to Defendant Johnson are the same defenses available to any prosecuting attorney charged with adhering to the statutory provisions and rely on the same legal and factual bases.

27. Moreover, the interest of the named Defendant Class representative aligns with the interests of the proposed Defendant Class. See *Turtle Island Foods*, 425 F. Supp.3d at 1137 (finding the typicality requirements satisfied “because all of the prosecuting attorneys are charged with enforcing Mo.Rev.Stat. § 265.494(7), the defense of the representative party – the Prosecuting Attorney of Cole County would be typical of the defenses raised by all of the other prosecuting attorneys in the state”).

28. The typicality requirement is satisfied because the defenses of class representative Johnson are typical of the class.

29. The adequacy requirement is satisfied when “the representative parties will fairly and adequately protect the interests of the class.” Rule 52.08(a)(4).

30. Adequacy is found where: (1) “class counsel is qualified and competent to conduct the litigation” and (2) the proposed class representatives have “no interests that are antagonistic to the other proposed class members.” *Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 130 (Mo. App. 2017).

31. Even if a named representative seems unwilling to act as a representative of a class, that alone will not preclude certification. See *Marcera v. Chinlund*, 595 F.2d 1231, 1239 (2d Cir. 1979), vacated on other grounds *sub nom. Lombard v. Marcera*, 442 U.S. 915 (1979) (Rule 23(a)(4) “does not require a willing representative but merely an adequate one.”)

32. Because Defendant Johnson's interests in the constitutionality of the challenged laws are no different than those of Missouri's other prosecuting attorneys, the named representative is appropriate and adequate for purposes of class certification.

33. Defendant Johnson and her counsel will fairly and adequately protect the interests of the entire Defendant Class.

34. Plaintiffs must also demonstrate that the proposed Defendant Class fits into at least one of the categories identified in Rule 52.08(b). The proposed Defendant Class meets the requirements of three of these categories: Rule 52.08(b)(1)(A), (b)(2), and (b)(3).

35. Certification is appropriate under Rule 52.08(b)(1)(A) where separate actions would create a risk of "inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct." Rule 52.08(b)(1)(A).

36. If the constitutionality of the challenged laws was raised in numerous separate lawsuits against various prosecuting attorneys in their 115 respective jurisdictions, then there is a possibility of inconsistent adjudications, resulting in different findings regarding the constitutionality and interpretation of the challenged laws. As a result, Plaintiffs could be subjected to conflicting rules and standards for providing abortion care across the State, creating significant administrative hurdles and the further risk of arbitrary and inconsistent enforcement of the law, and substantially burdening their ability to engage in these activities.

37. Inconsistent interpretations would hinder and complicate the work of all prosecutors.

38. Under Rule 52.08(b)(2), a class may be certified if: "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole[.]" Rule 52.08(b)(2).

39. This provision can apply where, as here, “a single injunction or declaratory judgment would provide relief against each member of the class.” *Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 480 (8th Cir. 2016).

40. The challenged laws are “generally applicable to the class” as all prosecutors must enforce the laws of the state, thus a single injunction or corresponding declaratory relief relating to the constitutionality of the challenged laws against the class as a whole would be appropriate.

41. Because Plaintiffs seek only injunctive and declaratory relief against an unconstitutional application of state statutes, the proposed Defendant Class satisfies Rule 52.08(b)(2).

42. The proposed Defendant Class also satisfies Rule 52.08(b)(3) because “questions of law and fact common to the members of the class predominate over any questions affecting only individual members,” and a class action is the fairest and most efficient way to adjudicate the matter. Rule 52.08(b)(3).

43. If a Defendant Class is not certified, courts in each of Missouri’s 115 prosecutorial jurisdictions, considering individual cases raising identical claims about the constitutionality of the challenged laws, would be required to address questions of law common to the members of the proposed Defendant Class that predominate over any individual questions, making a class action superior to other methods for fairly and efficiently adjudicating the constitutionality of the challenged laws.

44. The alternative to certification of the proposed Defendant Class is the filing of multiple lawsuits until every prosecuting attorney has been individually sued and enjoined from prosecuting each of the challenged laws.

45. Permitting this lawsuit to proceed in a single adjudication against the proposed Defendant Class is the most efficient use of state court resources and will be the fairest method of ensuring

that parties are not subjected to inconsistent and conflicting rules in different jurisdictions throughout the state.

46. Class certification is appropriate under the circumstances because the requirements of Missouri Supreme Court Rule 52.08 are satisfied.

CONCLUSION

For all of the foregoing, it is, therefore,

ORDERED, ADJUDGED, AND DECREED that the Motion to Certify a Defendant Class is GRANTED.

IT IS FURTHER ORDERED that the Jackson County Prosecuting Attorney, Melesa Johnson, in her official capacity, is appointed as representative of the Defendant Class of prosecuting attorneys.

IT IS SO ORDERED.

February 14, 2025

Date


HON. TERRI J. ZHANG
Judge, Division 3

CC: All counsel via e-Notification