

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, et al,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:16-CV-4313-HFS
)	
)	
PETER LYSKOWSKI, et al.)	
)	
Defendants.)	

SUGGESTIONS IN SUPPORT OF

DEFENDANT PATTERSON’S MOTION TO DISMISS

Defendant Patterson has taken no action against any of the Plaintiffs. Defendant Patterson has not been presented with any alleged violation of Missouri law committed by Plaintiffs. Plaintiffs’ allegations are requiring Defendant Patterson to defend against speculation which is contrary to law. Defendant Patterson moves this Court to grant Defendant Patterson’s Motion to Dismiss for Lack of Jurisdiction pursuant to Rule 12(b).

LEGAL STANDARD

The burden of establishing jurisdiction is on the plaintiff. *Susan B. Anthony List v. Driehaus*, 134 S.Ct 2334, 2342, 189 L.Ed2d 246 (2014). Included in this burden is the requirement that plaintiff allege facts sufficient to demonstrate ripeness. *Reddy v. Foster*, 2017 WL 104825 (1st Cir. 2017). “Even a facial challenge to a statute is constitutionally unripe until a

plaintiff can show that federal court adjudication would redress some sort of imminent injury that he or she faces.” *Reddy*, 2017 WL 104825 (1st Cir. 2017). While there have been instances in which pre-enforcement challenges to abortion legislation were allowed, generally, those cases involved challenges filed before the law went into effect or immediately after the law went into effect. *i.e. Planned Parenthood of Southeastern Pa v. Casey*, 505 U.S. 833, 845 (1992), *Planned Parenthood of Central New Jersey v. Farmer* 220 F.3d 127, 147 (3rd Cir. 2000). The laws challenged by Plaintiffs are not newly enacted laws.

ARGUMENT

I. Plaintiffs’ Allegations that the ASC Requirements Are Unconstitutional Are Not Ripe as to Defendant Patterson

Plaintiffs do not have a licensed abortion facility in Springfield, Greene County, because Plaintiffs voluntarily surrendered their license in 2005. Plaintiffs do not allege that they applied for an abortion facility license in Springfield, Greene County, and were denied. Plaintiffs do not allege that an administrative variance was sought. Plaintiffs do not allege that an administrative variance was denied in Springfield. Plaintiffs do not allege that they requested the Department of Health and Senior Services (DHSS) to adopt the requirements of the Columbia settlement agreement for the Springfield facility and were denied. Plaintiffs do not allege why the Springfield facility does not meet the current requirements. Plaintiffs do not allege how the Springfield facility is different from the St. Louis facility which is licensed. Plaintiffs do not allege that there would be a financial hardship to comply with the ASC requirements.

“Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over

administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Nat’l Park Hospitality Ass’n v. DOI*, 538 U.S. 803, 807, 123 S.Ct. 2026, 155 L. Ed.2d 1017 (2003)(citing *Abbott Labs.*, 387 U.S. at 148-49, 87 S.Ct. 1507). There are two prongs to a ripeness analysis: (1) the fitness of the issue for a judicial decision, and (2) the hardship to the parties of withholding court consideration. *New Life Evangelistic Center Inc. v. City of St.Louis*, 2015 WL 6509338 (E.D. Mo. 2015). “A party seeking judicial relief must necessarily satisfy both prongs to at least a minimal degree. Judicial resolution of a legal question fit for judicial review yet portending no immediate hardship would constitute little more than a law review article. Conversely, to resolve an issue lacking factual development simply to avoid a threatened harm would be to favor expedition over just resolution.” *Nebraska Public Power Dist. V. MidAmerican Energy Co.* 234 F.3d 1032 (8th Cir. 2000). Additionally, when dealing with a challenge to a regulatory procedure, plaintiffs need to exercise applicable rights regarding requests for variances or exemptions before a claim is ripe. *See McCarthy v. Ozark School District*, 359 F.3d 1029, 1037 (8th Cir. 2004), *New Life Evangelistic Center Inc*, at 2015 WL6509338 (E.D. Mo. 2015).

While Plaintiffs makes several general allegations about the ASC, Plaintiffs have not provided the DHSS the opportunity to license its facility in Springfield. Plaintiffs’ allegations against other Defendants detail conversations and litigation regarding the licensing of different facilities. However, Defendant Patterson was not a party to those conversations or the litigation and is not authorized to license a facility. Plaintiffs’ allegation is based upon its own speculation that DHSS will not grant an abortion facility license in Springfield. Defendant Patterson should not be required to defend against this speculation. Plaintiffs’ claims require additional factual

development allowing the DHSS to determine exactly how suited Plaintiffs' facility is for providing abortion services. Plaintiffs cannot expect this Court to permanently enjoin the State of Missouri from having any regulations on the facility in which abortions are performed. Until Plaintiffs actually apply for an abortion facility license in Springfield and DHSS denies the application and any requested variance and Patterson is called upon to take enforcement action, there is no actual controversy as it applies to Defendant Patterson.

II. Plaintiffs' Allegation that the Hospital Privileges Requirement

Is Unconstitutional Is Not Ripe

Plaintiffs asserts that the hospitals in Springfield will not grant clinical privileges. Plaintiffs do not allege that an application was made to a Springfield hospital. Plaintiffs do not allege that a Springfield hospital denied a doctor's request for privileges. Plaintiffs allege that their doctors have privileges at hospitals. (Complaint, ¶ 34). Plaintiffs then allege that their doctors are unable to meet requirements for privileges because of the nature of their practices. (Complaint, ¶ 35). Plaintiffs do not allege that they have been unable to hire a doctor in Springfield with privileges at a Springfield hospital. Plaintiffs do not allege that they were unsuccessful in their attempt to find a backup doctor with local privileges. Instead, Plaintiffs make speculative assertions regarding what will happen if they apply for privileges or if they seek assistance from the Springfield medical community.

A complaint based on speculation does not create a justiciable controversy that is ripe for review. *State of Missouri ex rel. Missouri Highway and Transportation Comm'n v. Cuffley*, 112 F.3d 1332, 1337 (8th Cir. 1997). Similar to the ASC claim, this claim requires additional factual development before it is ripe.

CONCLUSION

Plaintiffs' claims are not ripe as to Defendant Patterson. Plaintiffs do not and cannot allege that Defendant Patterson has threatened or pursued any charges against any abortion facility or abortion doctor. Plaintiffs do not allege that they have taken any action in Springfield to support the legal claims made in their complaint. This lawsuit is based entirely on what Plaintiffs expect DHSS and the local Springfield hospitals might do. Defendant Patterson has no authority as to the DHSS decision to grant or deny an abortion facility license in Springfield or the local hospitals decision to grant or deny privileges to a doctor in Springfield. Defendant Patterson cannot be expected to defend the speculative denial of an abortion facility license by the DHSS. Defendant Patterson cannot be expected to defend the speculative denial of local hospital privileges. Unless and until Plaintiffs' claims become ripe, this complaint against Defendant Patterson should be dismissed.

Respectfully submitted,

Mr. Dan Patterson
Prosecuting Attorney
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/s/ T. Todd Myers

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ATTORNEY FOR DEFENDANT PATTERSON

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification to the following:

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