

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

OUR LADY’S INN, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 4:17-cv-01543-AGF
)	
CITY OF ST. LOUIS,)	
)	
Defendant.)	

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by and through their undersigned counsel, pursuant to Federal Rule of Civil Procedure 56 and this Court’s Local Rule 4.01, and for the reasons set forth in the accompanying memorandum of law, hereby move for summary judgment on their claims that Ordinance 70459 violates Plaintiffs’ rights under the United States Constitution and Missouri law.

1. Ordinance 70459 was approved by the City of St. Louis Board of Aldermen on February 10, 2017, and took effect on or about February 13, 2017.

2. Prior to enactment of Ordinance 70459, the City of St. Louis had prohibited discrimination based on the familiar categories of “race, color, age, religion, sex, familial status, disability, sexual orientation, national origin or ancestry.” To this list, Ordinance 70459 added a new protected class based not on immutable characteristics or a class of persons historically subject to social opprobrium, but rather on conduct involving willful choice: those who have made or expect to make “reproductive health decision[s].”

3. Ordinance 70459 defines a “reproductive health decision” in language that is both sweeping and confusing. It defines “reproductive health decision” as “any decision related to the

use or intended use of a particular drug, device, or medical service related to reproductive health, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy.” Section One (14). This definition goes well beyond an individual woman’s decision to have an abortion. It includes “any decision,” by anyone, that is “related to” abortion. The pregnancy terminated or to be terminated may be a woman’s own or it may be the pregnancy of a spouse, a friend, or anyone. The Ordinance does not require that the person complaining of discrimination even know the pregnant woman.

4. The newly protected class created by Ordinance 70459 thus includes, among others, abortion activists, advocates and providers, all of whom have made “decision[s] related to” abortion.

5. Plaintiffs are employers in the City of St Louis subject to Ordinance 70459. They believe abortion destroys the life of an unborn child, and they oppose abortion as a matter of sincerely held religious beliefs.

6. Plaintiff Our Lady’s Inn provides housing, counseling, perinatal nursing support, employment readiness and training opportunities, sober living support and additional services to pregnant women in difficult circumstances. Our Lady’s Inn openly and explicitly provides its services and opportunities to women solely as an alternative to abortion.

7. Plaintiff Archdiocesan Elementary Schools is a group of Archdiocesan elementary schools administered by the Catholic Education Office and governed by the Archdiocesan Board of Catholic Education. It operates three elementary schools within the City of St. Louis. Archdiocesan Elementary Schools’ activities must accord with the Canons of the Catholic Church.

8. Plaintiff O'Brien Industrial Holdings, LLC, is a private company based in St. Louis, Missouri, which is principally owned and managed by Plaintiff Frank O'Brien, Jr. Frank O'Brien holds to the teachings of the Catholic Church regarding the sanctity of human life from conception to natural death, and he operates his company in a manner consistent with those beliefs.

9. Ordinance 70459 expressly forbids constitutionally protected speech, barring employers, as well as persons selling or leasing real property or offering housing, from printing or publishing any statement which expresses "any preference, limitation, specification or discrimination because of reproductive health decisions" Sections Two (B)(5) and Two (C)(1)(f). These are "speech codes" that violate the First Amendment's guarantee of freedom of speech.

10. Ordinance 70459 forbids Plaintiffs and others from making adverse employment, housing or realty decisions—or even "indicat[ing] a preference" in relation to employment, housing, or realty—based on an individual or entity being an abortion activist, advocate or provider. The Ordinance therefore infringes Plaintiffs' right to expressive association, in that they cannot hire, rent, or otherwise associate in accordance with their beliefs that abortion is a grave moral wrong.

11. Ordinance 70459 violates Archdiocesan Elementary Schools' rights under the First Amendment Religion Clauses, as interpreted by the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). Under *Hosanna-Tabor*, such religious organizations must have the freedom and autonomy to order their own internal affairs in matters involving ecclesiastical government, faith, doctrine, and the

communication of that doctrine, including the selection of religion teachers at their own educational institutions.

12. The Ordinance specifically exempts some religious organizations from having to provide health insurance for abortion, but by implication forces non-exempt parties, including O'Brien Industrial Holdings, LLC and Frank Robert O'Brien Jr., to cover abortions in their employee health care plans. This mandate violates both the Equal Protection Clause of the U.S. Constitution and Missouri law. *See* Mo. Rev. Stat. 191.724, 376.805.1.

13. In addition, and as more fully described in the accompanying memorandum of law, Ordinance 70459 is substantially overbroad, void for vagueness, and in violation of several other federal constitutional and state statutory provisions, including the Missouri Religious Freedom Restoration Act and portions of the newly enacted Senate Bill 5. The Ordinance also lacks a functioning enforcement mechanism.

14. Entry of an injunction is appropriate in this case because there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Rule 56(c) of the Federal Rules of Civil Procedure).

15. Plaintiffs are filing a memorandum of law in support of this motion and incorporate that memorandum by reference.

WHEREFORE, for the reasons stated herein and in all the pleadings, motions, briefs, declarations and exhibits filed herewith, which are incorporated herein by reference, Plaintiffs respectfully request that the Court enter summary judgment in their favor and against the City of St. Louis:

(a) Declaring the following provisions of St. Louis Ordinance 70459 to be unconstitutional, unlawful, invalid, unenforceable, null and void and otherwise of no force and effect, as applied to Plaintiffs respectively:

1. Our Lady's Inn: Section Two (A); (B)(1) (first sentence), (2) (first sentence), (5); and (C)(1)(a), (b), (c), (d), (e), (f), (g), (h);
2. Archdiocesan Elementary Schools: Section Two (A); (B)(1) (first sentence), (2) (first sentence), (5); and
3. Frank O'Brien & O'Brien Industrial Holdings: Section Two (A); (B)(1) (first sentence), (2) (first sentence), (5);

(b) Declaring the following provisions of St. Louis Ordinance 70459 to be facially unconstitutional, unlawful, invalid, unenforceable, null and void and otherwise of no force and effect:

1. Section Two (A);
2. Section Two (B)(1) (first sentence), (2) (first sentence), (3), (4), (5); (C)(1)(a), (b), (c) (d), (e), (f), (g), (h); and
3. Section Three;

(c) Enjoining the City of St. Louis, including its officers, agents, servants, and employees, from enforcing the provisions enumerated in (a) above against those Plaintiffs to which their application is unlawful, and the provisions enumerated in (b) above against Plaintiffs and all other persons;

(d) Declaring the remaining provisions of St. Louis Ordinance 70459 to be invalid because they are "so essentially and inseparably connected with, and so dependent upon, the void provision[s] that it cannot be presumed that the Board of Aldermen would have enacted the valid

provisions without the void ones,” and because “the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent,” Ordinance 70459, Section Five;

(e) Awarding Plaintiffs the costs of this action, reasonable attorney fees, expert fees and expenses pursuant to 42 U.S.C. 1988, and as otherwise provided by law; and

(f) Granting such other and further relief as the Court shall deem necessary and just.

Respectfully submitted this 25th day of September, 2017.

THOMAS MORE SOCIETY

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Certificate of Service

I hereby certify that on September 25, 2017, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri to be served by operation of the Court’s electronic filing system upon the following registered CM/ECF participants:

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