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MEMORANDUM

TO: Linda Rallo

FROM: Eddie Greim, Graves Garrett LLC

REGARDING: Right to Life Protections in Tobacco Tax Initiative Petition

Submitted by Raise Your Hand for Kids ("RYH4K")

DATE: January 27, 2016

You have reported that certain parties connected with a rival tobacco tax petition have begun to claim that the RYH4K proposal for early-childhood health is actually a clandestine method for funding abortions. This claim is absurd. As discussed below, abortion funding is impossible under this proposal. First, abortions do not fall within any of the three permissible purposes of the measure. This alone would make it impossible, and indeed, unlawful, to fund abortions with proceeds from the proposed tax. *See* Section A, below. Second, to make doubly sure that no monies are used for abortion, the proposal states this specifically. *See* Section B, below. Third, to ensure that no abortion provider attempts to circumvent this ban by obtaining grants for other services, and then using that funding to help subsidize overhead or other shared operations, the proposal provides that no money can be granted to an abortion clinic or similar entity. *Id.* Finally, it is worth reflecting on the fact that if there is any form of violence that directly conflicts with the purpose of RYH4K's measure, it is abortion. Abortion extinguishes a life—the very precondition for the growth, health, and education of children.

It is notable that the timing of the rumor campaign coincides with the forty-third anniversary of the infamous decision of *Roe v. Wade* (January 22, 1973). This suggests that it is part of a deeply cynical effort to deceive and manipulate pro-life Missourians who believe, as does RYH4K, that life begins at conception. These efforts to mislead the public are not just politics as usual: they come with a real cost to the entire pro-life movement. First, the public must have confidence in our pro-life and religious partners to provide accurate information about legislation that advances (or that may harm) the cause; circulation of misinformation undermines that goal at a critical time for pro-life and religious liberty initiatives. Second, an important aspect of the pro-life movement is ensuring new mothers that if they have the courage to choose life, they will not be left to fend for themselves. RYH4K's proposal aims to provide funds for mothers and their children when they are most vulnerable, and when outside support can do the most good. For these reasons, it is



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important to immediately provide the truth to anyone who seems to have been deceived by politically-motivated rumors.

A. The Amendment

Raise Your Hand for Kids is the campaign committee supporting the 2016 Early Childhood Health and Education Amendment. The Amendment's core purpose is defined in the Amendment: "It shall be the public policy of this state to improve the health and education of children, from birth through age five, and to improve accountability for early childhood health and education funding." The Amendment creates a fund, the Early Childhood Health and Education Trust Fund, to be distributed in grants to public and private entities. Grants must be distributed in the following manner:

a. At least seventy-five percent (75%) of funds shall be disbursed in grants for improving the quality of and increasing access to Missouri early childhood education programs, including preschool, home visitation, parent and family support and education, professional development and training for early childhood development providers, and increasing coordination of and public information about the importance of early childhood development;

b. No less than ten percent (10%) and no more than fifteen percent (15%) of funds shall be disbursed in grants to Missouri hospitals or other health care facilities to improve access to quality early childhood health and development programs, including preventative health care, obesity prevention, infant mortality prevention, health and developmental screenings for Missouri children ages birth through five; and

c. No less than five percent (5%) and no more than ten percent (10%) of funds shall be disbursed in grants to provide evidenced-based smoking cessation and prevention programs for Missouri pregnant mothers and youth to be used solely for the purpose of establishing, maintaining, and enhancing activities, programs, and initiatives to promote tobacco use quit assistance and prevention, including a comprehensive statewide tobacco control program . . . [as defined in federal law].



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These three uses of funds (childhood education, improving children's access to health care, and smoking cessation for pregnant mothers and youth) are mandatory, not discretionary. They allow no room for abortion or cloning, including embryonic stem cell research. Even without an express prohibition (discussed in Section B below), it would plainly be unconstitutional to award any grants for abortion or cloning. Further, we believe a taxpayer would have standing to challenge and enjoin any such grants of taxpayer funds.

B. Additional Included Language to Protect the Sanctity of Life

As outlined above, the mandatory language in the Amendment does not allow any of the funds raised in the Early Childhood Health and Education Trust Fund to be used for abortion services, human cloning, or embryonic stem cell research (as those terms are defined in RSMo. § 196.1127). However, out of an abundance of caution, the Amendment took a “belt and suspenders” approach to ensure that no funds may ever be granted to fund activities that violate the sanctity of life. The Amendment therefore provides that none of the grant money could be used for abortion, human cloning, or embryonic stem cell research, clinical trials, therapies, and “cures,” as those terms are already defined in law.

To that end, Raise Your Hand for Kids included the following provision in its constitutional amendment, which mirrors and, at least in part, incorporates the language in RSMo. § 196.1127:

None of the funds collected, distributed, or allocated from the Early Childhood Health and Education Trust Fund shall be expended, paid or granted to or on behalf of existing or proposed activities, programs, or initiatives that involve abortion services including performing, inducing, or assisting with abortions, as defined in law, or encouraging patients to have abortions, referring patients for abortions not necessary to save the life of the mother, or development of drugs, chemicals, or devices intended to be used to induce an abortion. None of the funds collected, distributed, or allocated from the Early Childhood Health and Education Trust Fund shall be expended, paid or granted to or on behalf of any abortion clinic, abortion clinic operator, or outpatient health care facility that provides abortion services, unless such services are limited to medical emergencies.



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No funds from the Early Childhood Health and Education Trust Fund shall be used for human cloning or research, clinical trials, or therapies or cures using human embryonic stem cells, as defined in Article III, section 38(d).

Pursuant to Article III, section 38(d), “research, clinical trials, or therapies or cures using human embryonic stem cells” “means any scientific or medical research, [or clinical trials, or therapies or cures] involving human stem cells derived from in vitro fertilization blastocysts or from somatic cell nuclear transfer.”

C. RYH4K’s Belt and Suspenders Approach Ties Directly to Existing Statutory Efforts to Protect Life

1. RYH4K’s Definition Ties to the Only Existing Statutory Definition of Abortion

RYH4K’s Amendment ties directly to the current statutory definition of “abortion,” which the General Assembly enacted after many years of hard work by Missouri’s pro-life movement. The Amendment clearly prevents grantees from using the money for anything that may involve abortions, and uses the definition of “abortion services” that is already codified at Section 196.1127, RSMo. That provision was passed to prohibit certain types of public funds from being used for abortion services. As part of the definition, it cites another law, Section 188.015, which expansively defines “abortion:”

(a) The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's womb; or

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;

Id. By providing that “abortion” shall be construed “as defined in law”, RYH4K incorporates the General Assembly’s prudent and expansive definition.



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2. RYH4K's Language Prevents abortion providers, clinics, and facilities from receiving money for non-abortion services

Above and beyond the protections regarding the use of funds, the Amendment contains language that ensures that no abortion facilities or abortion facility operators are eligible to receive the money in the Early Childhood Health and Education Trust Fund. This language prevents organizations like Planned Parenthood from receiving the money and using it on non-abortion services, which may not directly support abortions, but would provide financial assistance to entities that perform abortions.

D. Conclusion

In conclusion, RYH4K included strong protections that prevent any funds generated from the Amendment from being used for abortions, human cloning, or activities that use embryonic stem cells. The money is required to be granted to public and private entities for use in specific, enumerated activities, none of which could conceivably involve abortion, human cloning, or any uses of embryonic stem cells. Nonetheless, RYH4K took a belt and suspenders approach to ensure that none of the money could be used to fund abortions or any activity that violates the sanctity of life.

Sincerely,

Graves Garrett, LLC