

Request for Attorney General Opinion

1. Information about requestor:

Representative Crystal Quade represents Missouri House District 132. She was first elected to the Missouri House of Representatives in 2016, was reelected both in 2018 and 2020, and currently serves as a member of the 101st General Assembly. Her office is located in Room 204 of the Missouri Capitol, and the office phone number is 573-751-3795.

2. Official capacity of requestor:

Rep. Quade is a duly elected State Representative serving the constituents of Springfield residing in Missouri House of Representatives District 132. She currently serves as a member of the 101st General Assembly, Second Regular Session. She also serves as the House Minority Caucus Leader. Her principal office in this capacity is in Cole County, Missouri, in the Missouri Capitol building.

3. The question of LAW upon which I request your legal opinion is as follows:

As women, patients and health care providers across Missouri are grappling with how to proceed with following this law, our office has been inundated with requests for clarity. In your position as the state's elected attorney, we therefore ask that you provide much needed guidance as to how you believe it should be interpreted. Perhaps even more importantly, in your position as a potential enforcement agency for this law, it is even more essential that Missourians understand quickly how the law will be interpreted by your office.

The questions of law I ask your office to issue a legal opinion on are:

1. Does your office intend to independently prosecute and/or otherwise pursue allegations of illegal abortions under Chapter 188? RSMo 188.075.3 appears to grant "concurrent original jurisdiction" to the attorney general to commence actions against violations of this chapter. Is it your understanding that this grants you the authority to pursue charges regardless of whether a local prosecutor does so or intends to do so? Do you intend to use your office's resources for such actions?
2. Is it your interpretation that RSMo 188 prohibits the prescription or use of any current forms of birth control?
3. In particular, there appears to be significant disagreement among various attorneys over whether RSMo 188, particularly 188.015(1), RSMo., prohibits the use of the morning after pill, or IUDs that, in addition to preventing fertilization, can prevent the implantation of a fertilized egg. Would your office pursue charges against a provider that prescribes any such medicines or devices for the purposes of preventing a pregnancy?
4. RSMo 188 provides that a woman may not be charged for "conspiracy" to induce an abortion. Is your position, as the governor has suggested in his executive order on this subject, that this language also prevents a pregnant person from being charged for the underlying crime of inducing an illegal abortion?

Request for Attorney General Opinion

4. A complete statement of the FACTS giving rise to this question is as follows:

2019 Enactment of HB 126

On May 17, 2019, the Missouri General Assembly Truly Agreed to and Finally Passed HB 126 (2019), colloquially referred to as the "Missouri Stands for the Unborn Act." That bill was signed into law by Governor Michael Parson on May 24, 2019. The provisions of HB 126 (2019) most relevant for the purposes of this brief include its immediate ban on abortion as soon as a fetal heart tone is detected and "trigger" provisions that to implement a complete ban on and criminalize abortion in the event the U.S. Supreme Court would either gut or overturn *Roe v. Wade*, 410 US 113 (1973).

The U.S. Supreme Court Decision in *Dobbs v. Jackson Women's Health Organization*

In 1973, *Roe* held that the right to an abortion is encompassed in the right to privacy afforded to Americans through the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. Nearly two decades later, *Planned Parenthood v. Casey* upheld this holding, further stating that the right to an abortion is a matter of personal liberty afforded by the Fourteenth Amendment. On Friday, June 24, 2022, a 5-4 majority of the U.S. Supreme Court held that because the Constitution does not refer to abortion at all, and because in their view nothing in the Constitution implicitly protects the right to an abortion, there is no federal constitutionally-protected right to abortion, in the process overturning *Roe* and *Casey* and triggering the provisions of HB 126 (2019).

Missourians' Concern Regarding Access to Contraception

Immediately after the *Dobbs* decision was released, my office and the offices of other members of my caucus began fielding questions regarding whether the provisions of HB 126 (2019) codified in Chapter 188, RSMo., that were triggered by the *Dobbs* decision also implicate Missouri girls and women's access birth control.

5. List each and every governmental entity involved in this request:

The Missouri House Minority Caucus, of which Rep. Quade both serves as a member of and has been duly-elected as its leader.

6. Which of the entities listed in response to Question 5 have attorneys paid with public funds? For each entity listed, attach a copy of the written legal opinion of each such attorney on the question involved herein.

The Missouri House Minority Caucus employs a legal counsel as member of its caucus staff, whose salary is consequently paid for with public funds. Their written legal opinion on the question involved herein is attached.

7. State in detail how the question of law relates to your official position or to the discharge of your duties.

As a duly elected official serving as a Member of the Missouri House of Representatives, as well as the leader of a Missouri House caucus, Rep. Quade is regularly asked to provide constituents and other citizens with accurate information as to what the statutes created by the General Assembly say and their anticipated impact upon citizens. With the U.S. Supreme Court's *Dobbs* ruling triggering

Request for Attorney General Opinion

many of the ban provisions of HB 126 (2019), Rep. Quade and the caucus she leads have begun to receive questions and concerns from Missourians about whether Missouri girls' and women's access to contraception is implicated or overtly threatened under the new legal framework. Rep. Quade and the caucus she leads want to provide citizens who communicate these concerns to them both clear answers and an assurance that they are the correct answers, regarding whether, in a post-*Roe* Missouri, attempted prosecutions of Missourians for using or prescribing birth control will be treated as illegal and baseless.

8. Is any litigation pending involving the issues raised in your opinion request?

We are aware of no pending litigation involving the issues raised in this opinion request.

9. If the answer to Question 8 is "yes" list the name of case, court in which it is pending and docket number of case:

See above.