

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

AT KANSAS CITY

RIGHT BY YOU,

Plaintiff,

v.

THE STATE OF MISSOURI;
ANDREW BAILEY, in his official
capacity as Attorney General of
Missouri; and **MELESA JOHNSON**,
in her official capacity as Jackson
County Prosecuting Attorney and on
behalf of a Defendant Class of all
Missouri Prosecuting Attorneys,

Defendants.

CASE No. 2516-CV13783

PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO STATE DEFENDANTS'
MOTION TO STAY PROCEEDING FOR FAILURE TO OBTAIN A CERTIFICATE
OF AUTHORITY

INTRODUCTION

As a last-ditch effort to prevent Missourians from vindicating their constitutional Right to Reproductive Freedom, the State Defendants argue that the Court must stay this entire lawsuit until Right By You obtains an irrelevant certificate from the Attorney General. Not only is this argument wrong on the merits, but it is also wrong as a matter of procedure.

This Court should deny the State Defendants' Motion to Stay ("State Defs.' SIS Mot to Stay") because Right By You is a fiscally-sponsored project of a California nonprofit that does not "transact[] business" in Missouri within the meaning of either §§ 351.574.1 or 355.756.1, RSMo. Even if Right By You were required to obtain a certificate of authority to engage in some of its activities, this case does not arise from the transaction of business in Missouri, and Plaintiff seeks only *prospective* injunctive and declaratory relief to determine its rights under Missouri law. Finally, even if this Court were to conclude that Right By You should obtain a certificate of authority, a stay of this lawsuit is neither legally required nor warranted. This Court has full discretion to allow this case to proceed while Right By You's request for a certificate of authority is pending and to stave off the State Defendants' attempts to avoid being accountable to Missouri's Constitution.

BACKGROUND

Right By You is a fiscally sponsored project of a "501(c)(3) nonprofit organization incorporated in California." Pet. ¶ 22.¹ All of Right By You's volunteers and its sole

¹ Plaintiff has addressed Defendants' related argument regarding Right By You's legal capacity to sue as an incorporated nonprofit organization in its Suggestions in Support of its Preliminary Injunction and its Suggestions in Opposition to Defendants' Motions to Dismiss. See SIS Prelim. Inj. & SIO Defs.' Mtns. to Dismiss.

employee work remotely. *Id.*; Declaration of Stephanie Kraft Sheley, JD, MHA (“Sheley Decl.”) ¶ 8. Right By You operates a Text Line that provides “accurate, comprehensive, and non-judgmental counseling to young people throughout Missouri.” Pet. ¶ 22. Right By You’s counseling is conducted entirely remotely by text message, with no physical contact between volunteers and texters in the state of Missouri. Sheley Decl. ¶ 18. Texters learn about Right By You primarily through its website and on the website of the National Network of Abortion Funds. *Id.* ¶ 9. Right By You also runs a free Emergency Contraception program. *Id.* ¶ 19. As part of that program, Right By You provides emergency contraception and other materials to Missouri businesses and volunteer organizations, which then are responsible for directly distributing them to Missourians. *Id.*

ARGUMENT

Missouri law requires foreign corporations and non-profit organizations that “transact[] business in this state” to obtain a “certificate of authority” to “maintain a proceeding in any court” in Missouri. §§ 351.574.1, RSMo (applying to corporations); 355.756.1, RSMo (applying to nonprofit organizations). By its plain terms, neither statute imposes any obligations on a foreign corporation that is not transacting business in the state of Missouri. *See also* State Defs.’ SIS Mot. to Stay at 2–3. Clear and binding precedent in Missouri and persuasive caselaw from other states interpreting similar provisions of law make clear that Right By You’s activities do not constitute “transacting business” in the state. Right By You provides information and counseling to pregnant teens in Missouri regarding their pregnancy options, including abortion care. Its activities are conducted entirely remotely, without any physical presence in the state of Missouri and Right By You’s sole employee

also works remotely. Similarly, Right By You operates its Emergency Contraception program remotely, with limited physical presence in the state. Right By You provides emergency contraception and other materials to local Missouri-based individuals and businesses, which are then responsible for distributing the materials to Missourians directly.

Even more importantly, Sections 351.574.1 and 355.756.1 are entirely inapplicable here because, even if Right By You has or intends to “transact[] business” in Missouri, this lawsuit is unrelated to any past transaction of business in the state. This lawsuit does not stem from a contract or any specific activity Right By You has conducted in the state. To the contrary, Right By You filed this lawsuit to determine its rights under the Missouri Constitution and its ability to engage in expanded programming consistent with its core activity in the future.

Finally, even if this Court were to determine that Right By You should obtain a certificate of authority, this Court has full discretion to allow this case to proceed. Defendants should not be allowed to drag their feet in this lawsuit simply because they are determined to ignore the will of Missourians, who voted to protect and preserve the constitutional Right to Reproductive Freedom in their state.

I. Right By You Does Not “Transact Business” In Missouri

“The determination of whether a foreign corporation is ‘doing’ or ‘transacting’ business in [Missouri] . . . is primarily dependent upon the facts and circumstances of the particular case.” *United Mercantile Agencies v. Jackson*, 173 S.W.2d 881, 883 (Mo. 1943); *see also Ozark Emp. Specialists, Inc. v. Beeman*, 80 S.W.3d 882, 889 (Mo. Ct. App. W.D. 2002) (citation omitted). As the party alleging that Plaintiff “transacts business” in Missouri, the

State Defendants bear the burden of proving that Right By You is “transacting business” in the State and that it requires a certificate of authority to maintain this lawsuit. *See, e.g., Superior Concrete Accessories v. Kemper*, 284 S.W.2d 482, 487 (Mo. 1955); *Ozark Emp. Specialists*, 80 S.W.3d at 889. Missouri law contains a non-exhaustive list of activities that “do not constitute transacting business,” including: “[m]aintaining, defending, or settling any proceeding”; “[s]elling through independent contractors”; “[c]onducting an isolated transaction”; and “[t]ransacting business in interstate commerce.” §§ 355.751.2–3, 351.572.2–3, RSMo; *see Collar v. Peninsular Gas Co.*, 295 S.W.2d 88, 91 (Mo. 1956) (“[E]ngaging in litigation . . . do[es] not constitute ‘doing business’”); *Taylor & Martin, Inc. v. Hiland Dairy, Inc.*, 676 S.W.2d 859, 864–65 (Mo. Ct. App. S.D. 1984) (holding that “isolated transaction” of “one auction sale in Missouri” did not constitute “transact[ing] business”). Here, Right By You is engaged in activities that are either isolated transactions, selling or distributing through independent contractors, or interstate commerce—none of which constitute “transacting business” under Missouri law.

First, every aspect of Right By You’s Text Line is managed and conducted entirely remotely, without any physical contact between Right By You’s staff and volunteers and texters in Missouri. In similar situations, Missouri courts have been clear that such activity is considered “interstate commerce”—*not* “transacting business” within the state. For example, in *Ozark Employment Specialists*, the Missouri Court of Appeals for the Western District held that an Arkansas corporation did not need to obtain a certificate of authority to maintain a lawsuit because its activities—speaking by phone with a Missouri-based corporation, mailing materials to and from Missouri, and using the fax machine to distribute information—were

not considered “transacting business” in the state. 80 S.W.3d at 891–92. Notably, in *Ozark*, the Arkansas corporation had at least one *in-person* meeting in Missouri, but the Court held that such limited physical presence was not sufficient to constitute transacting business. *Id.* By contrast, Right By You does not meet with its clients in-person in Missouri.

Similarly, in *Filmmakers Releasing Organization v. Realart Pictures of St. Louis Inc.*, the St. Louis Court of Appeals held that a corporation that maintained its principal place of business in another state and engaged in all transactions through the mail was simply engaged in the “transmission of ideas and intelligence” into the state of Missouri—not the “transaction of business” in the state. 374 S.W.2d 535, 541 (Mo. Ct. App. St. Louis 1964). Like the film distribution company in *Filmmakers Releasing Organization*, Right By You’s Text Line distributes information, ideas, counseling, and support to Missouri residents through the phone and internet—not in physical locations in the state.

In similar contexts, courts have repeatedly held that use of the phone and internet to connect with residents of Missouri is not sufficient to confer personal jurisdiction in Missouri over the corporation. These cases are persuasive authority, as the Missouri Supreme Court has explicitly identified the similarities between the “transacting business” inquiry and the personal jurisdiction inquiry under Missouri’s long arm statute. *See Collar v. Peninsular Gas Co.*, 295 S.W.2d 88, 91–92 (Mo. 1956) (citing *United Mercantile Agencies*, 173 S.W.2d 881); *see, e.g., Capitol Indem. Corp. v. Citizens Nat’l Bank of Fort Scott, N.A.*, 8 S.W.3d 893, 904 (Mo. Ct. App. W.D. 2000) (“[U]se of the mail or telephone communications, without more, does not constitute the transaction of business for purposes of long arm jurisdiction in Missouri.”); *see also Georgalis v. Facebook, Inc.*, 324 F.Supp.3d 955, 960 (N.D. Ohio 2018)

(declining to exercise personal jurisdiction in Ohio over website that had no physical presence in the state even though it had consumers located in the state and directed virtual advertising to residents of the state); *FC Inv. Grp. LC v. IFX Mkts, Ltd.*, 479 F. Supp. 2d 30, 39 (D.D.C. 2007) (holding that making “regular” phone calls into the jurisdiction does not constitute “transacting business” for the purposes of long arm jurisdiction); *Dresden v. Treasure Island, LLC*, No. 00 C 6153, 2001 WL 1002518, at *6 (N.D. Ill. Aug. 31, 2001) (using a website to advertise services in a state is not considered “doing business” sufficient to bring corporation within Illinois’ long-arm statute).

Campaign Works, Ltd. v. Hughes, which the State Defendants rely upon, further confirms that Right By You is not engaged in the transaction of business. In that case, the Missouri Court of Appeals for the Western District held that a corporation was engaged in the transaction of business when its President physically entered Missouri to “provide . . . personal consultation and advice” to Missouri residents, and the “express terms” of the relevant contract required the corporation’s “services . . . to be [physically] rendered in Missouri.” 779 S.W.2d 305, 306 (Mo. App. W.D. 1989) (emphasis added). Importantly, the Court in *Campaign Works* explicitly observed that it would have reached a different conclusion if the foreign corporation “had merely given reports and the product of campaign research to respondents from [its] offices in Florida and Washington.” *Id.* at 307. Here, Right By You does not physically enter Missouri to provide counseling and support to Missourians; instead, its Text Line is managed remotely, under the auspices of a California-incorporated nonprofit organization. *Supra* at 3.

Moreover, the fact that some of Right By You’s volunteers happen to reside in Missouri does not mean that Right By You *as an organization* is engaged in the transaction of business in the state. In *Superior Concrete Accessories*, the Missouri Supreme Court rejected the suggestion that a corporation without a physical office in Missouri was engaged in the transaction of business in the state simply because one of its employees “maintained his own office [in Missouri] at his sole expense.” 284 S.W.2d at 486. Similarly, Right By You’s volunteers fund their own residence in Missouri; they are not compensated by Right By You for their work, and they can engage in their volunteer activities from any location they choose because Right By You’s Text Line is conducted and managed entirely remotely. *See, e.g., Kayser Roth Co. v. Holmes*, 693 S.W.2d 907, 908 (Mo. Ct. App. W.D. 1985) (company that used representatives in Missouri but had “no office, warehouse or distribution center” in the state was not “transacting business”); *Central Woodwork, Inc. v. Steele Supply Co.*, 358 S.W.2d 447, 448 (Mo. Ct. App. Springfield 1962) (company that “does not maintain any office in Missouri, but employs one salesman who travels in Missouri” was not engaged in the “transact[ion] of business” in Missouri).²

² The State Defendants wrongly rely on an out-of-state case interpreting the *Illinois* definition of “transacting business” in the context of a nonprofit organization. *See* State Defs.’ SIS Mot. to Stay at 8. Notably, they cite no case that interpreted Missouri’s definition of “transacting business” for nonprofit corporations, which applies to Right By You. *See supra* at 3. In any event, the facts of *Young America’s Foundation v. Doris A. Pistole Revocable Living Trust* are entirely different from the facts here. In that case, the foreign nonprofit organization worked “actively with student groups on Illinois campuses, h[eld] conferences in Illinois, me[t] with donors in Illinois, and sponsor[ed] lectures in Illinois.” 998 N.E.2d 94, 105 (Ill. Ct. App. 2013). The Illinois court also noted that some of the organization’s activities, including “using the mails or Internet,” constituted “*interstate* processes,” not *intrastate* processes constituting the transaction of business. *Id.* (emphasis added). Here, Right By You does not meet in person with Missourians or engage in any of

Just as Right By You's Text Line does not meet the definition of "transacting business," the Emergency Contraception program falls squarely within one of the explicit exceptions to "transacting business" under Section 355.751. Specifically, Missouri law states clearly that distributing goods through "independent contractors" is not considered "transacting business" in Missouri. § 355.751.2(5), RSMo. Defendants dwell on Right By You's Emergency Contraception Program without acknowledging the mechanics of how the program works. *See* State Defs.' SIS Mot. to Stay at 7. Through its Emergency Contraception Program, Right By You partners with Missouri-based organizations and businesses, which then distribute Emergency Contraception kits to Missourians. *See supra* at 3–4. In *Bath Junkie Branson, L.L.C. v. Bath Junkie, Inc.*, the Western District of Missouri held that a business that sold its product to Missouri-based individuals for resale was not involved in the "transaction of business" under Missouri law. No. 04-3421-CV-S-RED, 2006 WL 8452699, at *1 (W.D. Mo. Nov. 29, 2006) ("A foreign corporation does not transact business in Missouri if it sells its product to a Missouri company that distributes and resells the product to Missouri consumers"). The Court explained that even if the foreign corporation "dictate[d] the method by which [in-state distributors] must sell [the] products," the foreign corporation was not transacting business in Missouri. *Id.* Likewise, Right By You's distribution of Plan B and other materials to Missouri-based businesses and volunteer organizations for redistribution throughout the state does not constitute "transacting business."

the in-person, physical activities that the Court in *Young America's Foundation* found persuasive in concluding that the nonprofit was engaged in the transaction of business.

Finally, to the extent that Right By You has occasionally distributed Emergency Contraception kits directly in the state, including at the Olivia Rodrigo concert, *see* State Defs.’ SIS Mot. to Stay at 6–7, those in-state activities are merely isolated transactions that do not count as transacting business. *See* § 355.751, RSMo; *Taylor & Martin, Inc.*, 676 S.W.2d at 865.³

II. Even if Right By You Has “Transacted Business” In Missouri, Sections 355.756.1 and 351.574 are Inapplicable Because This Lawsuit Is Not Related to Its Past Transaction of Business

The State Defendants ignore the plain language of Sections 355.756 and 351.574 and relevant case law when they argue that any organization engaging in the transaction of business is forbidden from suing in Missouri unless it first obtains a certificate of authority from the state. To the contrary, Missouri law only forbids organizations that transact business without a certificate of authority from suing if their lawsuit *relates* to the past transaction of business in the state. *See* §§ 351.576(1)–(2), 355.756(1)–(2), RSMo.

Missouri courts are clear: “The fact that a [foreign corporation], as to other matters and transactions, may be doing business within the state in such manner as to require a license therefor, does not prevent the company from performing another perfectly valid transaction in interstate commerce which is not subject to state regulation.” *Superior Concrete Accessories*, 284 S.W.2d at 487; *see also United Mercantile Agencies*, 173 S.W.2d at 714

³ It is misleading for the State Defendants to suggest that *in-person* direct distribution of Emergency Contraception is “core” to Right By You’s work. *See* State Defs.’ SIS Mot. to Stay at 6 & n.10. The social media post they refer to describes the Emergency Contraception program generally as “core” to Right By You’s work, but as explained above, the Emergency Contraception program largely involves partnering with Missouri organizations to distribute the materials. *See supra* at 3–4, 9.

(“Those acts are not void which are done while the corporation is merely doing or transacting such business as it may have authority to do.”). Thus:

The right to sue is not taken away by the state statute for failure to have a license, but **only the right to enforce contracts made in the doing of business subject and contrary to state regulation**. Consequently the mere fact that a company without a license, may have engaged in business within the state for which a license is required, is no reason for penalizing it with reference to interstate business for which no license is needed. *Superior Concrete Accessories*, 284 S.W.2d at 487 (emphasis added); *see also Taylor & Martin*, 676 S.W.2d at 865–66.

Here, even if some of Right By You’s past activities involved transacting business—which they did not—this lawsuit does not stem from any prior activity or program that involved transacting business. Importantly, this lawsuit seeks only prospective injunctive and declaratory relief. Unlike the cases State Defendants rely upon, Right By You does not seek damages following an alleged broken contract related to *past* work completed in the state. *See Campaign Works*, 779 S.W.2d at 307 (dismissing foreign corporation’s lawsuit seeking payments for services rendered under contract because contract involved “transacting business” in the state without a certificate of authority). This lawsuit requires the Court to determine Right By You’s and its clients’ rights under the Missouri Constitution and the scope of Right By You’s lawful activities in the future. *See also* § 355.751.2(1), RSMo (stating that “[m]aintaining, defending, or settling any proceeding” does not count as transacting business). For the same reason, even if certain aspects of Right By You’s future core activities—including funding abortions and providing logistical support to Missouri teens seeking abortions—constitute “transacting business,” this lawsuit does not stem from those actions but rather seeks clarity about Plaintiff’s right to engage in those activities *in the*

future. Thus, this lawsuit does not relate to the transaction of business, and Sections 351.574 and 355.756 do not prohibit Right By You from maintaining this lawsuit. *See Taylor & Martin*, 676 S.W.2d at 865–66 (explaining that a lawsuit stemming from the transaction of interstate commerce can be maintained in Missouri even if the same plaintiff was also engaged in “transacting business” in Missouri without a certificate of authority).

III. Even if Right By You Must Obtain a Certificate of Authority, a Stay Would Be Improper

Finally, even if this Court were to find that Right By You “transacts business” in Missouri, a stay is neither legally required nor warranted. Both Sections 351.574 and 355.756 are discretionary, providing that a Court “may” stay a case until it determines whether a certificate of authority is required, and, if so, it “may” further stay the case until the certificate is obtained.

First, as explained above, a stay is not required here because Right By You’s ability to maintain a lawsuit related to its rights under the Missouri Constitution and the scope of its future activities has nothing to do with its purported past transaction of business in Missouri. *See supra* at 11–12.

Second, a stay is improper here because the State Defendants are not entitled to indefinitely prolong the deprivation of Missourians’ constitutional rights simply because they disagree with their fellow Missourians’ decision to enshrine the Right to Reproductive Freedom in their Constitution. Even if this Court concludes that Right By You must obtain a certificate of authority, this Court can and should allow this case to continue while Right By You’s application for a certificate of authority is pending.

CONCLUSION

For the foregoing reasons, Right By You respectfully asks this Court to deny the State Defendants' Motion to Stay this case.

Dated: July 7, 2025

Respectfully submitted,

/s/ Ryan R. Agnew

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CERTIFICATE OF SERVICE

I, Ryan R. Agnew, do hereby certify that on July 7, 2025, I caused the foregoing to be electronically filed using the Missouri E-Filing system. Service will be made on all counsel of record by operation of the Missouri E-Filing system.

/s/ Ryan R. Agnew
Ryan R. Agnew