

Nos. 18-1323, 18-1460

IN THE
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., et al.,
Petitioners-Cross-Respondents,

v.

REBEKAH GEE, SECRETARY, LOUISIANA DEPARTMENT
OF HEALTH AND HOSPITALS,
Respondent-Cross-Petitioner.

**On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

JOINT APPENDIX

VOLUME I

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Petition for Writ of Certiorari Filed: April 17, 2019

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
(Baton Rouge)

June Medical Services,	§	
L.L.C., et al.	§	
v.	§	No. 3:14-cv-00525-
	§	JWD-RLB
Kathy Kliebert, et al.	§	

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
08/22/2014	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief against All Defendants * * * filed by June Medical Services LLC. * * *
08/22/2014	<u>4</u>	MOTION for Protective Order by All Plaintiffs. * * *
08/22/2014	<u>5</u>	MOTION for Temporary Restraining Order <i>and Motion for Preliminary Injunction</i> by All Plaintiffs. * * *
08/26/2014	<u>14</u>	AMENDED COMPLAINT for Declaratory and Injunctive Relief against All Defendants, filed by June Medical Services LLC. * * *
08/26/2014	<u>19</u>	RESPONSE in Opposition to <u>4</u> MOTION for Protective Order

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		filed by James David Caldwell. * * *
08/26/2014	<u>20</u>	MEMORANDUM in Opposition to <u>5</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Jimmy Guidry, Kathy Kliebert. * * *
08/27/2014	<u>23</u>	Consolidated Response to DHH Defendants' Opposition to Plaintiffs' Application for Temporary Restraining Order and for Protective Order, * * * filed by All Plaintiffs. * * *
08/28/2014	<u>24</u>	ORDER granting <u>4</u> Motion for Protective Order. * * *
08/28/2014	<u>25</u>	Declaration of Secretary Kathy Kliebert * * * .
08/28/2014	<u>27</u>	NOTICE of Supplemental Authority <i>Amended Declaration of Kathy Kliebert</i> * * * .
08/31/2014	<u>31</u>	ORDER granting <u>5</u> Motion for Temporary Restraining Order * * * .
10/08/2014	<u>50</u>	Chart of Pending Applications by All Plaintiffs. * * *

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
10/08/2014	<u>51</u>	Memorandum Regarding Status of Pending Applications for Privileges by Delta Clinic of Baton Rouge, Inc., John Doe 5, John Doe 6, Women's Health Care Center, Inc. * * *
11/03/2014	<u>57</u>	ORDER CLARIFYING TEMPORARY RESTRAINING ORDER OF AUGUST 31, 2014 * * * .
11/17/2014	<u>64</u>	ANSWER of Defendant Kathy Kliebert to June Medical Services <u>14</u> Amended Complaint * * * .
01/15/2015	<u>84</u>	SECOND ORDER CLARIFYING TEMPORARY RESTRAINING ORDER OF 8/31/2014 * * * .
02/16/2015	<u>87</u>	MOTION for Partial Summary Judgment by Mark Henry Dawson, Kathy Kliebert. * * *
02/16/2015	<u>88</u>	MEMORANDUM in Opposition to <u>5</u> MOTION for Preliminary Injunction filed by Mark Henry Dawson, Kathy Kliebert. * * *
02/26/2015	<u>91</u>	Supplemental STATUS REPORT <i>Regarding Pending</i>

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		<i>Applications for Privileges</i> by All Plaintiffs. * * *
03/10/2015	<u>95</u>	MOTION in Limine to Exclude Irrelevant Evidence by Kathy Kliebert. * * *
03/11/2015	<u>104</u>	SEALED MEMORANDUM in Opposition to <u>87</u> MOTION for Partial Summary Judgment filed by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC. * * *
03/13/2015	<u>107</u>	REPLY in Support of <u>87</u> MOTION for Partial Summary Judgment filed by Mark Henry Dawson, Kathy Kliebert. * * *
03/18/2015	<u>120</u>	SEALED MEMORANDUM of Law in Opposition to <u>95</u> MOTION in Limine to Exclude Irrelevant Evidence filed by All Plaintiffs. * * *
03/19/2015	<u>121</u>	Supplemental STATUS REPORT <i>of Pending Applications</i> by All Plaintiffs. * * *
03/20/2015	<u>123</u>	REPLY in Support of <u>95</u> MOTION in Limine to Exclude

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		Irrelevant Evidence filed by Kathy Kliebert. * * *
05/12/2015	<u>138</u>	RULING AND ORDER granting in part and denying in part <u>87</u> Motion for Partial Summary Judgment. * * *
05/12/2015	<u>139</u>	For the reasons given in the Court's Ruling and Order (Doc. 138) on Defendant Kathy Kliebert's Motion for Partial Summary Judgment, Defendant's Motion in Limine to Exclude Irrelevant Evidence [Doc.95] is DENIED. * * *
06/11/2015	<u>144</u>	MOTION for Reconsider Rulings on Summary Judgment and Motion in Limine by Kathy Kliebert. * * *
06/29/2015	<u>165</u>	List of Admitted Exhibits by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC. * * * # <u>59</u> Exhibit JX 54 * * * .
06/29/2015	<u>168</u>	Consent SEALED MOTION for Leave to File Joint Submission of Deposition Designations Under Seal by All Plaintiffs. * * *

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
07/07/2015	<u>176</u>	SEALED Joint Stipulation Regarding Admitting Privileges of Dr. John Doe #5. * * *
08/21/2015	<u>190</u>	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 22, 2015. * * *
08/21/2015	<u>191</u>	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 23, 2015. * * *
08/21/2015	<u>192</u>	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 24, 2015. * * *
08/21/2015	<u>193</u>	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 25, 2015. * * *
08/21/2015	<u>194</u>	NOTICE OF FILING OF OFFICIAL REDACTED

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 26, 2015. * * *
08/21/2015	<u>195</u>	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT of Proceedings * * * before Judge John W. deGravelles held on June 29, 2015. * * *
08/24/2015	<u>196</u>	Proposed Findings of Fact and Conclusion of Law by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC. * * *
08/24/2015	<u>197</u>	SEALED MOTION for Leave to File Confidential Exhibits to Plaintiffs' Proposed Findings of Fact and Conclusions of Law Under Seal by All Plaintiffs. * * *
08/25/2015	<u>200</u>	SEALED Defendant's Proposed Findings of Fact and Conclusions of Law. * * *
09/03/2015	<u>201</u>	OBJECTIONS to <u>196</u> Proposed Findings of Fact and Conclusions of Law filed by Kathy Kliebert.

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
09/03/2015	<u>202</u>	RESPONSE to <u>200</u> SEALED Document <i>Defendant's Proposed Findings of Fact and Conclusions of Law</i> filed by All Plaintiffs. * * *
09/25/2015	<u>209</u>	Letter from Demme Doufekias to Judge John W. deGravelles. Regarding Physicians' Admitting Privileges Applications * * * by All Plaintiffs. * * *
01/26/2016	<u>216</u>	FINDINGS OF FACT AND CONCLUSIONS OF LAW * * * .
02/10/2016	<u>227</u>	JUDGMENT * * * .
02/10/2016	<u>228</u>	NOTICE OF APPEAL to the USCA for the 5th Circuit of <u>227</u> Judgment, <u>216</u> Order on Motion for Preliminary Injunction, * * * by Kathy Kliebert. * * *
02/10/2016	<u>229</u>	MOTION to Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay by Kathy Kliebert. * * *
02/12/2016	<u>232</u>	MEMORANDUM in Opposition to Defendant's <u>229</u> MOTION to

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		Stay the Preliminary Injunction Pending Appeal filed by All Plaintiffs. * * *
02/16/2016	<u>234</u>	ORDER denying <u>229</u> Defendants Motion for Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay. * * *
02/18/2016	<u>237</u>	SEALED ELECTRONIC EXHIBITS for hearing dated 06/22/15. * * *
02/25/2016	<u>239</u>	OPINION of USCA: It is ORDERED that Louisiana's emergency motion for a stay pending appeal is GRANTED, and the district court's injunction is STAYED until the final disposition of this appeal, in accordance with this opinion. * * *
03/01/2016	<u>240</u>	Supplemental STATUS REPORT <i>of Admitting Privileges Applications</i> by All Plaintiffs. * * *
04/01/2016	<u>245</u>	Supplemental STATUS REPORT <i>of Admitting Privileges Applications</i> by All Plaintiffs. * * *

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
05/02/2016	<u>246</u>	Supplemental STATUS REPORT <i>of Admitting Privileges Applications</i> by All Plaintiffs. * * *
06/01/2016	<u>247</u>	Supplemental STATUS REPORT <i>of Admitting Privileges Applications</i> by All Plaintiffs. * * *
08/01/2016	<u>249</u>	Supplemental STATUS REPORT <i>of Admitting Privileges Applications</i> by All Plaintiffs. * * *
08/25/2016	<u>254</u>	MANDATE of USCA as to <u>228</u> Notice of Appeal to the USCA for the 5th Circuit, filed by Kathy Kliebert. Appellants motion to remand the case to the United States District Court for the Middle District of Louisiana so that the district court can engage in additional fact finding required by the decision in <i>Whole Womans Health v. Hellerstedt</i> , 579 U.S. ____ (Jun, 27, 2016) (slip op.), is GRANTED. * * *
09/15/2016	<u>255</u>	Joint STIPULATION <i>regarding Causeway Medical Clinic</i> by Bossier City Medical Suite, Choice Inc. of Texas, John Doe

<u>Date</u>	<u>ECF</u>	<u>Docket Text</u>
		1, John Doe 2, June Medical Services LLC. * * *
09/19/2016	<u>256</u>	Revised and Supplemental Proposed Findings of Fact and Conclusions of Law by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC. * * *
04/23/2017	<u>270</u>	NOTICE of CORRECTED Letter to Judge deGravelles by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC * * * .
04/23/2017	<u>272</u>	DECLARATION of <i>Dr. John Doe 2, M.D.</i> by Bossier City Medical Suite, Choice Inc. of Texas, John Doe 1, John Doe 2, June Medical Services LLC. * * *
04/26/2017	<u>274</u>	FINDING OF FACTS AND CONCLUSION OF LAW * * * .
04/26/2017	<u>275</u>	JUDGMENT * * * .
05/05/2017	<u>276</u>	NOTICE OF APPEAL to the USCA for the 5th Circuit of <u>275</u> Judgment, <u>274</u> Opinion, by Rebekah Gee. * * *

RELEVANT DOCKET ENTRIES

No. 17-30397

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JUNE MEDICAL SERVICES, L.L.C., doing business
as Hope Medical Group for Women; JOHN DOE 1;
JOHN DOE 2,
Plaintiff-Appellees

v.

DOCTOR REBEKAH GEE, in her official capacity as
Secretary of the Louisiana Department of Health
and Hospitals,
Defendant-Appellant

On Appeal from the Middle District of Louisiana,
Baton Rouge, No. 3:14-CV-525
Hon. John W. deGravelles

<u>Date</u>	<u>Docket Text</u>
05/12/2017	CIVIL RIGHTS CASE docketed. * * *
09/06/2017	SUFFICIENT RECORD EXCERPTS FILED. * * *
09/06/2017	CORRECTED APPELLANT'S BRIEF FILED * * * .
09/12/2017	APPELLANT'S REDACTED BRIEF FILED * * * .
10/20/2017	APPELLEE'S BRIEF FILED. * * *

<u>Date</u>	<u>Docket Text</u>
11/17/2017	APPELLANT'S REPLY BRIEF FILED. * * *
05/03/2018	ORAL ARGUMENT HEARD before Judges Higginbotham, Smith, Clement. * * *
09/26/2018	PUBLISHED OPINION FILED. * * *
09/26/2018	JUDGMENT ENTERED AND FILED. * * *
10/05/2018	PETITION for rehearing en banc * * * .
01/18/2019	COURT ORDER denying Petition for rehearing en banc * * * .
01/25/2019	OPPOSED MOTION filed by Appellees John Doe 1, John Doe 2 and June Medical Services, L.L.C. to stay issuance of the mandate * * * .
01/25/2019	COURT ORDER denying opposed motion for stay of the mandate pending the filing of a petition for writ of certiorari * * * .
02/02/2019	SUPREME COURT ORDER. Because the filings regarding the application for a stay in this matter were not completed until earlier today and the Justices need time to review these filings, the issuance of the mandate of the United States

<u>Date</u>	<u>Docket Text</u>
	Court of Appeals for the Fifth Circuit, case No. 17-30397, is administratively stayed through Thursday, February 7, 2019. This order does not reflect any view regarding the merits of the petition for a writ of certiorari that applicants represent they will file. * * *
02/08/2019	SUPREME COURT ORDER received The mandate of the United States Court of Appeals for the Fifth Circuit in case No. 17-30397 is stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. * * *
04/23/2019	SUPREME COURT NOTICE that petition for writ of certiorari [9035942-2] was filed by Appellees John Doe 1, John Doe 2 and June Medical Services, L.L.C. on 04/17/2019. Supreme Court Number: 18-1323. * * *
05/29/2019	SUPREME COURT NOTICE that petition for writ of certiorari [9063381-2] was filed by Appellant Ms. Rebekah Gee on 05/20/2019. Supreme Court Number: 18-1460. * * *

<u>Date</u>	<u>Docket Text</u>
10/07/2019	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellees John Doe 2, June Medical Services, L.L.C. and John Doe 1 in 17-30397 on 10/04/2019. * * *
10/07/2019	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellant Ms. Rebekah Gee in 17-30397 on 10/04/2019. * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR WOMEN, on behalf of its patients, physicians, and staff; BOSSIER CITY MEDICAL SUITE, on behalf of its patients, physicians, and staff; CHOICE, INC., OF TEXAS d/b/a CAUSEWAY MEDICAL CLINIC, on behalf of its patients, physicians, and staff, JOHN DOE 1, M.D., and JOHN DOE 2, M.D.,

Plaintiffs,

v.

JAMES DAVID CALDWELL, in his official capacity as Attorney General of Louisiana; KATHY KLIEBERT, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals; JIMMY GUIDRY, MD, in his official capacity as Louisiana State Health Officer, and MARK HENRY DAWSON, MD, in his official capacity as President of the Louisiana State Board of Medical Examiners,

Defendants.

Case No. 3:14-CV-525

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiffs June Medical Services LLC (d/b/a Hope Medical Group for Women) (“Hope”), Bossier City Medical Suite (“Bossier”), and Choice, Inc. of Texas (d/b/a Causeway Medical Clinic) (“Causeway”), on behalf of their patients, physicians and staff (collectively, “Clinic Plaintiffs”), JOHN DOE 1, M.D., on behalf of himself and his patients, and JOHN DOE 2, M.D., on behalf of himself and his patients (together with the Clinic Plaintiffs, “Plaintiffs”), by and through their undersigned attorneys, and for their Amended

Complaint against Defendants James David Caldwell, in his official capacity as Attorney General of Louisiana, Kathy Kliebert, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals (“DHH”), Jimmy Guidry, MD, in his official capacity as Louisiana State Health Officer, and Mark Henry Dawson, MD, in his official capacity as President of the Louisiana State Board of Medical Examiners, state as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief brought under the United States Constitution and 42 U.S.C. § 1983, to challenge the constitutionality of Louisiana House Bill 388, Regular Session (2014), to be codified at La. Rev. Stat. § 40:1299.35.2 (“H.B. 388” or the “Act”).
2. The Act requires that every doctor who provides abortions have active admitting privileges at a hospital not more than thirty miles from where the abortion is performed, and gives doctors a mere eighty-one days to comply, an impossible task in light of the fact that the hospitals within the area proscribed by the statute can take anywhere from 90 days to seven months to decide on a doctor’s privileges application.
3. Despite this and other obstacles, each doctor who does not currently have such privileges at Clinic Plaintiffs has submitted at least one application at a hospital within thirty miles of the clinic.
4. Upon information and belief, if the statute is enforced on its effective date of September 1, 2014, it is not at all clear that any doctor currently providing abortions at a clinic in Louisiana will be able to continue providing those services, thereby eliminating access to legal abortion in Louisiana.

5. As such, the admitting privileges requirement threatens irreparable injury to the Clinic Plaintiffs, their staff, and their patients, including, but not limited to, by depriving Plaintiff's patients' of their constitutional right to an abortion.

6. Plaintiffs seek declaratory and injunctive relief from these constitutional deprivations.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3)-(4).

8. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district, and the majority of Defendants, who are sued in their official capacities, carry out their official duties at offices located in this district.

PARTIES

10. Plaintiffs are 3 of only 5 clinics that provide abortions in the entire state of Louisiana.

11. Hope is a women's reproductive health clinic located in Shreveport, Louisiana, and has been providing care since 1980. Hope is a member of the National Abortion Federation, and is licensed and inspected annually by DHH. In addition to abortion services, Hope provides contraception, pregnancy testing and counseling, adoption referrals, community and health professional education programs, and speaker services available to high schools,

colleges, and organizations to present information on birth control, abortion, adolescent sexuality and decision-making, and sexually transmitted diseases. Hope sues on its own behalf and on behalf of its physicians, staff and patients.

12. Bossier is a women's reproductive health clinic that has been operating in Bossier City since 1980, and provides both first and second trimester abortion services. In addition to abortion services, Bossier City offers pregnancy tests, ultrasounds, and pap smears to returning patients. Bossier City sues on its own behalf and on behalf of its physicians, staff and patients.

13. Causeway has been providing abortion and reproductive health services to the women of Louisiana since 1999. It is located in Metairie, Louisiana, and provides both first and second trimester abortions services. In addition to abortion services, Causeway offers pregnancy testing, ultrasounds, and pap smears to returning patients. Causeway sues on its own behalf and on behalf of its staff and patients.

14. Plaintiff Dr. John Doe 1, M.D., is a board-certified physician in Family Medicine and Addiction Medicine with over 8 years of experience. He is one of two clinic physicians at Hope providing women's health services to the clinic's patients, including providing abortion services. Plaintiff Doe 1 sues on his own behalf and on behalf of his patients.

15. Plaintiff Dr. John Doe 2, M.D., is a board-certified obstetrician-gynecologist ("ob-gyn") with over 34 years of experience in women's health. He is one of two clinic physicians at Causeway, and the only clinic physician at Bossier who provides abortion services. Plaintiff Doe 2 sues on his own behalf and on behalf of his patients.

DEFENDANTS

16. James David Caldwell is the Attorney General of the state of Louisiana. As Attorney General, Defendant Caldwell has the authority to enforce the Act. He is sued in his official capacity.

17. Kathy Kliebert is the Secretary of the Louisiana Department of Health and Hospitals. The Department of Health and Hospitals has the authority to revoke or deny clinics' licenses for violation of this or any other law. La. Rev. Stat. § 40:2175.6. She is being sued in her official capacity.

18. Jimmy Guidry is the Louisiana State Health Officer and Medical Director of the Louisiana Department of Health and Hospitals. He is being sued in his official capacity.

19. Mark Henry Dawson, MD, is the President of the Louisiana State Board of Medical Examiners (the "Board"). The Board has the authority to take disciplinary action against any physician. La. Rev. Stat. § 37:1263 et seq. He is being sued in his official capacity.

FACTUAL ALLEGATIONS

20. Legal abortion is one of the safest procedures in medical practice. Abortion complications are exceedingly rare: nationwide, less than 0.3% of abortion patients experience a complication that requires hospitalization. The Clinic Plaintiffs' hospitalization rates are even lower: at Hope, over the last 20 years, just 0.007% of patients experienced complications requiring hospitalization. At Bossier, the complication rate is only 0.004% for the past 5 years, and Causeway's complication rate for the past 5 years was just 0.0009%.

21. Even though abortion is exceedingly safe, Plaintiffs provide high quality care in the rare event of complications requiring hospitalization. Although most complications related to abortions are safely and appropriately managed in the clinic setting, in the rare event that a

patient needs to be transferred to a hospital, Plaintiffs have robust policies in place to ensure a high level of care.

22. Complications from abortion are not only rare, but the few complications that do occur may not present until after a patient has left the clinic. Upon discharge, Plaintiffs provide their patients with phone numbers to call if they experience complications or have concerns at any time after they have left the clinic. In rare cases where emergency care is required, Plaintiffs' staff will refer the patient to a local emergency room, as is also consistent with the standard of care.

23. Many of Plaintiff Clinics' patients travel from other parts of the state, or from neighboring states, to reach the clinic. If these patients experience a complication that requires emergency treatment after they have returned home, it is the standard of care to refer the patient to the hospital closest to her, rather than to require the patient to travel in an emergency situation to a hospital where her physician may have admitting privileges.

24. In the event that a patient does require post-procedure care at a hospital, patients typically are treated by the emergency room doctors on an outpatient basis and released. To the extent complications arise, the majority are similar to those encountered by women experiencing miscarriage, which emergency room doctors can, and routinely do, handle.

25. Requiring abortion providers to have hospital admitting privileges, therefore, does not increase patient safety and is medically unnecessary.

THE ACT AND ITS IMPACT

26. The Act provides that every doctor who provides abortions must "have active admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological

health care services (“admitting privileges requirement”). Exhibit 1¹ at § (A)(2)(a) (amending La. Rev. Stat. § 1299.35.2). “Active admitting privileges” means that “the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the department, with the ability to admit a patient and to provide diagnostic and surgical services to such patient.” *Id.*

27. Any doctor who violates this provision is subject to a fine of not more than four thousand dollars. *Id.* at § (A)(2)(c). Furthermore, failure to comply with the admitting privileges requirement will subject a clinic to adverse licensure action, up to and including license revocation. *Id.* at § (A)(1).

28. No physician who provides abortions at Bossier City or Causeway has admitting privileges at a hospital within 30 miles of the clinic. Although one physician at Hope has admitting privileges, the physician who provides the majority of abortions at Hope does not.

29. Although all of Clinic Plaintiffs’ physicians who do not have admitting privileges have applied for such privileges at a local hospital, there is not enough time for the hospitals to consider and decide the submitted applications before the Act takes effect. The process of applying for privileges and receiving a decision from a hospital on such an application can and generally does take months.

30. Hospitals have discretion in granting admitting privileges to doctors, and can deny privileges for reasons unrelated to qualification, such as a minimum number of guaranteed hospital admissions per year; political, ideological, or religious reasons; or based on residency requirements.

31. If the Act takes effect, Plaintiffs Hope, Bossier, and Causeway will stop providing abortion services. It is not at all clear that either of the other two clinics in Louisiana who

¹ Exhibit 1 to Plaintiffs’ Motion for Preliminary Injunction, filed August 22, 2014.

currently provide abortions will be able to continue to do so as of September 1, because none of the doctors who perform abortions there currently have admitting privileges at a qualifying hospital. The Act, therefore, will make legal abortion unavailable in the state of Louisiana.

32. Louisiana law does not require a physician providing any type of medical procedure other than abortion to have admitting privileges at a local hospital. Physicians perform similar, and often higher risk, outpatient procedures in their offices without admitting privileges.

IRREPARABLE INJURY

33. Plaintiffs and their patients will suffer irreparable harm from the violation of their constitutional rights if the Act goes into effect.

34. The Act will force Plaintiffs to close their clinics and will prevent them from providing comprehensive reproductive health care to their patients. It is not at all clear that either of the other two clinics currently providing abortions in Louisiana could continue to do so as of September 1.

35. The Act will jeopardize women's health, shutting down health centers that provide abortions without medical justification, and either eliminate or severely limit the availability of abortions in the state. As a result, many Louisiana women will be forced to carry their pregnancies to term, while others may resort to self-abortion.

36. Even if some women are able to obtain an abortion in Louisiana after the Act takes effect, by severely reducing the number of legal abortion providers in the state, the Act will force women to incur additional travel costs and delays in obtaining an abortion. Although abortion is one of the safest surgical procedures, the risk of complications, as well as the cost of the procedure, increases as the pregnancy advances. Given that many of Plaintiffs'

patients live below the federal poverty line, the increased costs alone will make it impossible for some women to obtain an abortion.

37. The Act will therefore irreparably harm Plaintiffs' patients in two ways: threatening the health of women seeking abortions, and depriving women of their constitutionally protected right to obtain a pre-viability abortion.

CLAIMS FOR RELIEF

COUNT I

(Procedural Due Process)

38. The allegations of paragraphs 1 through 34 are incorporated as though fully set forth herein.

39. The Act violates Plaintiffs' rights not to be deprived of liberty and property without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution.

COUNT II

(Substantive Due Process – Right to Privacy)

40. The allegations of paragraphs 1 through 34 are incorporated as though fully set forth herein.

41. The Act violates Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because it has the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. declare Louisiana House Bill 388, Regular Session (2014), unconstitutional under the Fourteenth Amendment to the United States Constitution;
2. without bond, enjoin Defendants, their employees, agents, and successors in office from enforcing H.B. 388;
3. award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
4. grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Respectfully submitted this 26th day of August, 2014.

/s/ William E. Rittenberg
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2014, a copy of the foregoing has been served upon all counsel of record in this action by electronic service through the Court's CM/ECF system. A copy has also been sent via facsimile and via overnight mail to the following parties:

James David Caldwell
Attorney General of Louisiana
P.O Box 94005
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Fax: (225) 326-6099

Mark Henry Dawson
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A copy of this Amended Complaint, as well as all other documents filed on behalf of Plaintiffs in this matter (pursuant to Local Rule 65.1) has also been sent via facsimile and via overnight mail to the following party:

Kathy Kliebert
Secretary
Louisiana Department of Health & Hospitals
P. O. Box 629
Baton Rouge, LA 70821-0629
Fax: (225) 342-5568

/s/ David D. Scannell
David D. Scannell

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC d/b/a HOPE
MEDICAL GROUP FOR WOMEN, on behalf
of its patients, physicians, and staff;
BOSSIER CITY MEDICAL SUITE, on behalf
of its patients, physicians, and staff;
CHOICE, INC., OF TEXAS d/b/a CAUSEWAY
MEDICAL CLINIC, on behalf of its patients
physicians, and staff, JOHN DOE 1, M.D.,
and JOHN DOE 2, M.D.,

Plaintiffs

v.

No. 14-CV-525-JWD-RLB

JAMES DAVID CALDWELL, in his official
capacity as Attorney General of
Louisiana; JIMMY GUIDRY, in his official
capacity as Louisiana State Health
Officer & Medical Director of the
Louisiana Department of Health and
Hospitals; and MARK HENRY DAWSON, in
his official capacity as President of the
Louisiana State Board of Medical
Examiners,

Defendants

**DHH DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND FOR PROTECTIVE ORDER**

Defendant Kathy Kliebert, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals, and Dr. Jimmy Guidry, in his official capacity as State Health Officer of Louisiana and Medical Director of the Louisiana Department of Health and Hospitals, file this opposition to plaintiffs' application for a temporary restraining order (Dkt. 5, 5-1) and to plaintiffs' motion for protective order (Dkt. 4, 4-1).

Plaintiffs are three of five clinics who provide abortion services in Louisiana, and two of their physicians. They sued on behalf of themselves, their patients, and staff to enjoin Louisiana's recently-passed admitting privileges law, Act 620 (to be codified at La. R.S. § 40:1299.35.2) ("admitting-privileges law"). Dkt. 1. The admitting-privileges law requires that a physician performing an abortion "shall ... [h]ave admitting privileges at a hospital that is located not further than thirty miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services." Act. 620, § 1 (amending LA. R.S. § 40:1299.35.2(A)(2)). Plaintiffs contend that the law violates their patients' substantive due process rights by unduly burdening their ability to obtain abortions, and also that it violates the physicians' procedural due process rights by requiring them to obtain admitting privileges in an unreasonably short time. Plaintiffs applied for entry of a TRO on Friday, August 22, 2014, five business days before the law's effective date of September 1, 2014. Dkt. 5-1.¹

LEGAL STANDARDS

A temporary restraining order "is an extraordinary and drastic remedy, and should only be granted when the movant has clearly carried the burden of persuasion." *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quotations omitted). The movant "must satisfy a cumulative burden of proving each of the four

¹ Plaintiffs have additionally requested that the law be preliminarily enjoined. The Court has asked defendants to limit the present response, to the extent practicable, to the question whether a TRO should issue before September 1. This opposition does so, but also makes some reference to the broader legal context in order to facilitate this Court's decision.

elements enumerated before a temporary restraining order ... can be granted.” *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (noting that the analogous preliminary injunction “is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion”) (quoting 11A WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE § 2948, 129-30 (2d ed. 1995)) (emphasis in original).

Thus, to obtain a TRO the movant bears the burden of clearly proving: “(1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Holland Am. Ins. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1974); *see also generally Doe v. Jindal*, 2011 WL 3664496, at *2 (M.D. La. Aug. 19, 2011) (unpublished); *Scott v. Livingston Parish Sch. Bd.*, 548 F. Supp. 2d 265, 266-67 (M.D. La. 2008) (discussing TRO factors).

Before it can even consider these factors, however, a district court must have Article III jurisdiction in order to enter a temporary restraining order. *See, e.g., Jindal*, 2011 WL 3664496, at *3 (noting in the TRO context that “jurisdiction ‘is a threshold issue that must be resolved before any federal court reaches the merits of the case before it’”) (quoting *Perez v. U.S.*, 312 F.3d 191, 194 (5th Cir. 2002)).

ARGUMENT

I. THIS COURT LACKS ARTICLE III JURISDICTION WITH RESPECT TO DEFENDANT GUIDRY.

A plaintiff may seek to enjoin an allegedly unconstitutional state law by suing a state official for injunctive relief under *Ex parte Young*, 209 U.S. 123 (1908). But the plaintiff may not just sue any state official. Rather, a *Young* suit may proceed “only ... when the named defendant state officials have *some connection with the enforcement of the [challenged law].*” *Okpalobi v. Foster*, 244 F.3d 405, 415 (5th Cir. 2001) (en banc) (citing *Young*, 209 U.S. at 155-56) (emphasis in original). For instance, the *en banc* Fifth Circuit concluded plaintiffs could not sue the Louisiana Governor and Attorney General under *Young* to enjoin an allegedly unconstitutional statute providing women with private tort remedies against abortion doctors. *Okpalobi*, 244 F.3d at 409, 416-21. The general duties of those officials to uphold Louisiana law was an insufficient connection to the challenged law. Instead, *Young* requires “a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.” *Okpalobi*, 244 F.3d at 416. Similarly, this Court has relied on *Okpalobi* to hold that the Louisiana Governor and Attorney General lacked sufficient connection to a law barring sex offenders from certain websites to support a *Young* suit against them. *Jindal*, 2011 WL 3664496, at *2-3.

In this case, Dr. Guidry lacks any enforcement connection to the challenged admitting-privileges law. Dr. Guidry is the State Health Officer, *see* LA. R.S. § 40:2, a DHH employee whose powers and duties are specifically set forth by statute. His principal duty is to “at all times take all necessary steps to execute the sanitary laws of the state and to carry out the rules, ordinances and regulations as contained

in the state sanitary code,” and he “may issue warrants only to arrest or prevent epidemics or to abate any imminent menace to the public health.” *Id.* § 40:3.² The governing statute enumerates the State Health Officer’s “exclusive jurisdiction, control, and authority” over subjects including communicable disease control, sanitary code enforcement, prison health regulations, food and water supplies, sanitary inspections and health permit issuance, and sewage disposal. *See generally id.* § 40:5(1)-(21) (listing all areas of the health officer’s jurisdiction).

None of Dr. Guidry’s responsibilities as State Health Officer, however, include enforcing the admitting-privileges law against clinics or physicians who provide abortion services. Neither plaintiffs’ complaint nor their TRO application makes any effort to link Dr. Guidry to enforcement of that law. Yet that is what the law requires to make a suit against Dr. Guidry proper under *Young*. *See Okpalobi*, 244 F.3d at 417 (named defendant state official must have “the ability ... to enforce the statute at issue under his statutory or constitutional powers”); *Jindal*, 2011 WL 3664496, at *3 (to demonstrate proper defendant under *Young*, plaintiff must “direct[] the Court to [a] provision of Louisiana law that empowers [the defendant state official] to provide the relief plaintiff seeks”)) (relying on *Oklapobi*).

Consequently, this Court has no Article III jurisdiction to issue injunctive relief against Dr. Guidry. *See, e.g., Jindal*, 2011 wL 3664496, at *3 (because named state

² *See also id.* § 40:4 (providing guidelines for state Sanitary Code respecting subjects such as “protect[ing] the consuming public against food-borne diseases,” “inspection of seafood,” regulation of “food establishments,” handling of “infectious waster generated by health care providers and noncommercial generators,” controlling spread of tuberculosis, and regulating “burial, transportation, disinterment, or other permitted disposition of dead human remains”).

officials lacked statutory “power to deprive the plaintiff of the constitutional rights at issue,” the complaint failed the redressability prong of standing). This lack of enforcement authority is sufficient to sustain a motion to dismiss on Dr. Guidry’s behalf, which Dr. Guidry plans to file at the appropriate time, if necessary. For present purposes, it is sufficient to demonstrate that the Court lacks Article III jurisdiction to enter a TRO against Dr. Guidry on the basis of the plaintiffs’ complaint.

While this opposition was being prepared, plaintiffs filed an amended complaint adding Secretary Kathy Kliebert as a defendant. Dkt. 14. Unlike Dr. Guidry, Secretary Kliebert does have enforcement authority with respect to the admitting-privileges law. Therefore, Secretary Kliebert is a proper defendant with respect to plaintiffs’ claims against the law. Notwithstanding that, defendants explain below why plaintiffs are not entitled to a TRO in advance of the law’s September 1 effective date.

II. ALTERNATIVELY, PLAINTIFFS ARE NOT ENTITLED TO A TRO.

Alternatively, even assuming this Court has Article III jurisdiction to enter injunctive relief against any defendant, plaintiffs are not entitled to a TRO on the basis of either their procedural due process claim or their substantive due process claim.

A. Plaintiffs are not entitled to a TRO on their procedural due process claim.

The gravamen of the plaintiff physicians’ procedural due process claim is that the admitting-privileges law did not afford them sufficient time to secure admitting

privileges at a hospital within 30 miles of their practice before the law's effective date of September 1, 2014. Dkt. 5-1 at 15. The two plaintiff physicians allege that they have applied for admitting privileges at various hospitals, but do not expect to receive an answer to those applications until after the effective date. *Id.* at 6, 16. They therefore urge the Court to enter a TRO against the law to prevent its enforcement against them on September 1. The Court should not grant their request for two reasons.

First, the plaintiff physicians could have easily assuaged any fears of enforcement over two months ago. When the admitting-privileges law was signed by Governor Jindal on June 12, 2014, the U.S. Fifth Circuit had already held on March 27 that an identical Texas admitting-privileges law could “not be enforced against abortion providers who applied for admitting privileges within the grace period ... but are awaiting a response from a hospital.” *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 600 (5th Cir. 2014). All plaintiffs had to do at that point was contact DHH and inform it that they had applied (or were planning to apply) for admitting privileges within the Louisiana law's grace period from June 12 to September 1. Indeed, they could still do this. Plaintiffs can have no reason to think that DHH would enforce the admitting privileges law contrary to a clear directive from the Fifth Circuit. Instead of taking this straightforward route, however, the plaintiff physicians filed a lawsuit and sought a TRO on a Friday afternoon, *five business days* before the law was scheduled to take effect.

It is a basic equity rule that unreasonable delay may vitiate a movant's entitlement to injunctive relief. *See, e.g., Silber v. Barbara's Bakery, Inc.*, 950 F.Supp.2d 432, 441-42 (E.D.N.Y. 2013) (discussing "the general rule that delay destroys a presumption of irreparable harm" concerning injunctive relief); *Conan Properties, Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 152 (5th Cir. 1985) (observing that "plaintiff's unreasonable delay and the defendant's actual reliance upon that delay precluded the issuance of an injunction") (citing *Saratoga v. Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1041 (2nd Cir. 1980)); *Citizens and Landowners v. U.S. Dept. of Energy*, 683 F.2d 1171, 1175 (8th Cir. 1982) (doctrine of laches "is properly invoked when a party seeking injunctive relief has engaged in unreasonable and inexcusable delay which results in undue prejudice to the other party") (citing, *inter alia*, *Clark v. Volpe*, 342 F.Supp. 1324, 1329-30 (E.D. La. 1972), *aff'd*, 461 F.2d 1266 (5th Cir. 1972)). Here, not only did plaintiffs unreasonably delay their TRO request until a mere five business days before the law's effective date, but they also neglected to pursue a far simpler course of action which would likely have obviated any fears of having the law enforced against them during the pendency of their admitting-privileges applications: they could have approached DHH and informed it both of their pending admitting-privileges applications and of the Fifth Circuit's clear directive from *Abbott*. That course remains open to plaintiffs, but instead they have sought a last-minute TRO. This Court should not countenance that request. *See, e.g., American Hosp. Supply Corp v. Hospital Products Ltd.*, 780 F.2d 589, 600 (7th Cir. 1986) (explaining that "the doctrine of unclean hands ... applies to

preliminary injunctions as to other equitable remedies”).

Second, the plaintiff physicians admit that their admitting-privileges requests are virtually certain to be denied because they rarely admit patients to local hospitals.³ Specifically, Dr. John Doe 1 has submitted applications to Willis Knighton, Minden, Christus Health, and University Health. Dkt. 5-1 at 7. He has already been turned down by University, is “unlikely” to obtain privileges at Christus because it is a Catholic hospital, and admittedly cannot qualify at Willis Knighton because he would not satisfy their minimum admission requirements. *Id.* at 7-8 & n.6.⁴ Dr. John Doe 2 has also applied to Willis Knighton, where he is likely to be denied privileges for the same reason, and has “received no response from Tulane Hospital” (for which plaintiffs supply no admitting-privileges criteria, *see* Dkt. 5-9 (summary of admitting-privileges requirements)). It makes little sense to grant plaintiffs a TRO in order to complete the applications process, when they openly admit that they will almost certainly not be granted admitting privileges

³ *See, e.g.*, Dkt. 5-1 at 8 (noting that “some, if not all, of the hospitals in Louisiana” have been advised by the accrediting organization “that they should not renew admitting privileges for doctors who have not admitted patients recently”); Dkt. 5-1 at 8 (stating that, if hospitals impose “minimum admission requirements,” then “Plaintiffs clinics’ doctors who specialize in providing abortions ... will *never* meet this minimum requirement, because they rarely admit clinic patients to the hospital”) (emphasis added); Dkt. 5-1 at 8 (observing that “historically, doctors at these clinics [i.e., Hope and Bossier] admit almost no patients to area hospitals”); Dkt. 5-1 at 8-9 (noting that Dr. Doe 3 “is the only physician known to Plaintiffs who currently has admitting privileges that comply with the Act” due to “his busy OB-GYN practice, not as a result of his work performing abortions at Hope”); *see also* Dkt. 5-1 at 7 n.4 (noting that Christus Health System is a Catholic hospital ... unlikely to grant admitting privileges to a doctor who performs abortions”).

⁴ His colleague at Hope, Dr. John Doe 3, admits that he has admitting privileges at a hospital “only because of this busy OB-GYN practice, not as a result of his work performing abortions at Hope.” Dkt. 5-1 at 9. This strongly suggests that Dr. Doe 1’s application would not be granted at Minden, either.

because they “admit almost no patients to area hospitals.” Dkt. 5-1 at 8. And, as discussed above, plaintiffs have had—and continue to have—every ability simply to approach DHH and confirm that DHH will not enforce the law against physicians with pending admitting-privileges requests under the Fifth Circuit’s *Abbott* decision. That would be the far more preferable course than compelling this Court to issue an eleventh-hour TRO against a state law designed to protect women’s health.

B. Plaintiffs are not entitled to a TRO on their undue burden claim.

Plaintiffs are also not entitled to a TRO based on their substantive due process claim that enforcement of the admitting-privileges law will so restrict abortion services in Louisiana as to place an “undue burden” in the path of women seeking abortion. *See* Dkt. 17-21; *see generally Gonzales v. Carhart*, 550 U.S. 124 (2007); *Planned Parenthood of Pennsylvania v. Casey*, 505 U.S. 833 (1992).

First, as explained above, plaintiffs have not shown any justifiable fear that the admitting-privileges law will be enforced against them *at all* while their applications are pending before local hospitals. To confirm that, plaintiffs need only approach DHH and inform it that they have pending applications before local hospitals and, in accordance with the Fifth Circuit’s *Abbott* decision, the law cannot be enforced against them while the applications are pending. Plaintiffs have not yet done this—despite the fact that the law was signed over two months ago—but have instead filed an eleventh-hour TRO request with this Court. Yet, the availability of a simple and non-litigious path to the same practical result completely obviates any

necessity for this Court to issue a TRO against the law. Indeed, it means that plaintiffs cannot possibly show any imminent irreparable injury that would justify entry of that “extraordinary and drastic remedy.” *Anderson*, 556 F.3d at 360.

Second, plaintiffs cannot possibly show a substantial likelihood of success on the merits of their undue burden claim, which is necessary to support entry of a TRO. The Fifth Circuit has already facially upheld Texas’s identical admitting-privileges law as a rational means of protecting women’s health and against an undue burden challenge. *Abbott*, 748 F.3d at 593-96; 597-99. Plaintiffs must therefore mount a far more difficult as-applied challenge to the Louisiana law. They claim they will be able to do so by demonstrating that, as a result of the law, “many women will not be able to access safe and legal abortion in Louisiana *at all*.” Dkt. 5-1 at 14 (emphasis added); *see also id.* at 17 (arguing law “will either drastically reduce or completely eliminate the availability of legal abortion in the state”). They thus hope to come within the Fifth Circuit’s holding in *Jackson Women’s Health Organization v. Currier*, __ F.3d __, 2014 WL 3730467, at __ (5th Cir. July 29, 2014), which found that an admitting-privileges law that would have closed the only abortion clinic in Mississippi created an undue burden. *See, e.g.*, Dkt. 5-1 at 20 (citing *Currier* for proposition that “[a] law that forces every abortion provider in the state to stop offering abortions is likely unconstitutional”); *id.* (claiming that the Louisiana law “is likely force all of ... Louisiana’s already small number of abortion providers to [close] as of September 1”).

As their lawsuit is currently constituted, however, it is legally impossible for

plaintiffs to obtain injunctive relief on the basis that the admitting-privileges law will “force[] *every abortion provider in the state* to stop offering abortions.” Dkt. 5-1 at 20 (emphasis added). Plaintiffs have sued on behalf of *three* clinics, but they admit that there are *five* clinics providing abortion services in Louisiana. *See, e.g.*, Dkt 1 at 3 (“Plaintiffs are 3 of only 5 clinics that provide abortions in the entire state of Louisiana.”). They do not represent those other two clinics and have provided no evidence whatsoever as to them; therefore, they cannot base a TRO request on speculation about what effect the Louisiana law will have on those clinics or on their physicians, staff, or patients. In *Abbott*, the Fifth Circuit emphatically required evidence as to the impact of the admitting-privileges law that was specific to each allegedly affected clinic. *See Abbott*, 748 F.3d at 597 (finding district court’s conclusion “clearly erroneous” that both Rio Grande Valley clinics would close because the court “accepted testimony regarding only one of them”). Moreover, because plaintiffs have no legal standing to advance claims on behalf of non-party clinics and physicians, they have no legal grounds for obtaining an injunction on the basis that the Louisiana law will “likely” force “all” of Louisiana’s abortion clinics to close. Dkt. 5-1 at 20. *See, e.g., Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (explaining that “neither declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to *the particular federal plaintiffs*”) (emphasis added); *Martin v. Wilks*, 490 U.S. 755, 762 (1989) (“A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those

proceedings.”). On this basis alone, plaintiffs’ TRO request based on their undue burden claim must fail.

III. PLAINTIFFS’ REQUEST TO PROCEED ANONYMOUSLY IS IMPROPER.

Additionally, the Court asked for defendants’ view about whether it should grant the plaintiff physicians’ motion for protective order allowing them to proceed anonymously. *See* Dkt. 4, 4-1 (plaintiffs’ motion for protective order and memorandum in support). The DHH Defendants take the position that—should the lawsuit proceed—the Court should deny plaintiffs’ motion.

The Federal Rules of Civil Procedure require all plaintiffs to disclose their names in the complaint. *See* FED. R. CIV. P. 10(a); *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. Unit A Aug. 1981); *Doe v. Blue Cross & Blue Shield United*, 112 F.3d 869, 872 (7th Cir. 1997) (Posner, J.). “Public access to this information is more than a customary procedural formality; First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings.” *Stegall*, 653 F.2d at 815 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 & n.17 (1980)). While the plaintiff physicians’ allegations that they have experienced anti-abortion threats in the past must be taken seriously, those allegations alone do not justify departing from Rule 10(a) and allowing “Dr. John Doe 1” and “Dr. John Doe 2” to challenge the Louisiana admitting-privileges law anonymously.

The Fifth Circuit has allowed departure from the usual rule requiring disclosure of plaintiff identities where prosecution of the suit would compel plaintiffs to disclose information “of the utmost privacy,” where plaintiffs could expect

harassment or violence as a result of filing the lawsuit, or where the lawsuit involved children. *See generally Stegall*, 653 F.2d at 186 (discussing factors); *see also Southern Methodist Univ. Ass'n of Women Law Students v Wynne and Jaffe*, 599 F.2d 707, 712 (5th Cir. 1979) (allowing litigants to use pseudonyms when disclosure of a litigant's name would reveal "matters of a sensitive and highly personal nature") (citation and quotation marks omitted).

Here the only factor that may justify anonymity is the allegation that the physicians have been the target of anti-abortion harassment in the past. Dkt. 4-1 at 3-4. Yet the Fifth Circuit has been clear that "[t]he threat of hostile public reaction to a lawsuit, standing alone, will only *with great rarity* warrant public anonymity." *Stegall*, 653 F.2d at 186 (emphasis added). In *Stegall*, the court found such justification where threats of violence against otherwise anonymous plaintiffs (some of whom were children) could have credibly been provoked by the filing of the lawsuit itself. *See id.* (noting that "the Does may expect extensive harassment and perhaps even violent reprisals if their identities are disclosed to a Rankin County community hostile to the viewpoint reflected in plaintiffs' complaint"); *id.* n.6 (discussing "local newspaper reports of public reaction to the lawsuit voiced at a Rankin County School Board meeting"); *id.* (discussing "the threats of violence *generated by this case*") (emphasis added).

The physicians' allegations here do not rise to the level of those in *Stegall*. For instance, Dr. John Does 1 and 2 each allege in general terms that they "know of many other abortion providers who have been victimized by harassment,

intimidation, and violence after speaking out publicly in favor of abortion rights,” and they also voice general concern about being subjected to such harassment and violence “if [they] become identified as ... public advocate[s] for abortion.” Dkt. 4-3, 4-4 at ¶¶ 3, 5. They also allege concerns about “retaliation by the hospitals and agencies with which [they] must interact in order to practice my profession.” *Id.* at ¶ 6. Finally, they allege that “[t]here are regularly protestors outside” the clinics where they work. *Id.* at ¶ 2.⁵

These allegations, however, are unlike those in *Stegall*. There, specific evidence showed that the very act of revealing the names of the plaintiffs to the community at large would provoke hostile and possibly violent retaliation. *Stegall*, 653 F.2d at 186 and n.6. Here, by contrast, plaintiffs note general attitudes in opposition to abortion in their communities, as well as protesting outside the clinics where they work. To be sure, plaintiffs have every right to be protected from harassment and violence; by the same token, the protesters outside plaintiffs’ clinics unquestionably engage in activity protected by the First Amendment. *See McCullen v. Coakley*, 134 S. Ct. 2518, 2537-41 (2014) (striking down under First Amendment a “buffer zone” restricting protests and counseling on public sidewalks outside abortion clinics). But the key point is that plaintiffs do not explain why the requirement to reveal their

⁵ Dr. John Doe 3’s allegations are more specific, *see* Dkt. 4-5 at ¶¶3-4 (alleging recent “physical and verbal threats” and “threatening flyers”), but also do not connect the perceived threats to being publicly affiliated with the lawsuit. Moreover, neither John Doe 3 nor 4 are named as plaintiffs in the lawsuit. Thus, it is not clear how their allegations factor into the Court’s disposition of the motion. To the extent they claim the same right as non-parties to proceed anonymously—for instance, simply for purposes of filing a supporting affidavit or participating in discovery—the Court should deny their motions for the same reasons given as to Does 1 and 2. To the extent any additional confidentiality issues arise during discovery, those can be dealt with at that time.

names in this lawsuit will somehow lead to threats against them.⁶ Further, plaintiffs cannot found a claim for anonymity on a desire to keep their identities from “hospitals and agencies,” since they have already had to reveal their identities to the hospitals in applying for admitting privileges.

Moreover, there are countervailing reasons against allowing the plaintiffs to proceed anonymously. Courts have repeatedly held that the public has a right to know the names of litigants, an interest grounded in the First Amendment.⁷ For this reason, anonymous litigation is “disfavored” and, “except when exceptional circumstances are present, all parties to a suit must be identified.” *Doe v. Sheriff of DuPage Cnty.*, 128 F.3d 586, 587 (7th Cir. 1997).

Disclosure of the plaintiff physicians’ names is also compelled by due process concerns. The government defendants must be able to intelligently and effectively research the professional background of these physicians as relates to the issues in

⁶ The Hope clinic administrator identifies two previous instances of vandalism against the clinic, one in 2005 and the other in “the early 1990s.” See Dkt. 5-3 ¶ 8 (discussing attempted arson and use of acid against clinic door). These are troubling occurrences, to be sure, but like the more general allegations from the doctors’ affidavits, there is no reason to think that naming the physicians in a complaint will trigger more occurrences like these.

⁷ See *Stegall*, 653 F.2d at 185 (“First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings.”); *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995) (per curiam) (“[P]arties to a lawsuit must typically openly identify themselves in their pleadings to ‘protect[] the public’s legitimate interest in knowing all of the facts involved, including the identities of the parties.’”) (quoting *Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992); *Blue Cross*, 112 F.3d at 872 (“Identifying the parties of the proceeding is an important dimension of publicness. The people have a right to know who is using their courts.”); *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004) (“Judicial proceedings are supposed to be open, as these cases make clear, in order to enable the proceedings to be monitored by the public. The concealment of a party’s name impedes public access to the facts of the case, which include the parties’ identity.”); *Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005) (“The public has an interest in knowing what the judicial system is doing, an interest frustrated when any part of litigation is conducted in secret.”).

this lawsuit. The physicians themselves, after all, brought the lawsuit, placing squarely at the center of the issues their own medical competence and compliance with state laws and regulations governing their medical practice. Their claims against Louisiana's admitting-privileges law should not be able to proceed simply on the say-so of their lawyers.

The Court should deny the plaintiff physicians' motion for protective order and require them to maintain this lawsuit in their own names, as Federal Rule of Civil Procedure 10(a) demands.

IV. IF THE COURT GRANTS A TRO, IT SHOULD STILL PROCEED TO A PRELIMINARY INJUNCTION HEARING ON THE UNDUE BURDEN CLAIMS.

Finally, the Court also asked defendants to address the question whether the grant of a TRO allowing plaintiffs to complete the admitting-privileges process should result in delaying consideration of the plaintiffs' undue burden claims against the Louisiana law. The DHH Defendants take the position that—should the Court enter a TRO on that basis, or should the parties reach some agreement obviating the need for a TRO—the Court should nonetheless proceed to a preliminary injunction hearing on the undue burden claims, giving defendants a reasonable amount of time to compile a documentary record sufficient to rebut the voluminous record already compiled by plaintiffs.

The Fifth Circuit has already shown the way here. In *Abbott*—despite addressing procedural due process claims similar to plaintiffs'—the Fifth Circuit nonetheless assessed the validity of an admitting privileges law identical to Louisiana's against the same undue burden challenge plaintiffs bring here. *See*

Abbott, 748 F.3d at 597-600. Moreover, while *Abbott* involved a facial challenge, the court nonetheless considered specific evidence of the kind that will be considered in this case. *See id.* at 591-93 (discussing competing expert testimony). The Fifth Circuit’s opinion did not suggest there was anything inappropriate in considering these constitutional issues, while at the same time concluding that the admitting-privileges law “may not be enforced against abortion providers who applied for admitting privileges within the [law’s] grace period ..., but are awaiting a response from a hospital.” *Id.* at 600.

There is no question that the physicians had standing to contest the law, even while their privileges requests were pending. The mere fact that they had to apply for privileges would have given them standing to challenge the law, and, further, the Fifth Circuit found the physicians in *Abbott* had third-party standing to assert their patients’ rights. *See id.* at 589. Nor would the pendency of the privileges applications create any ripeness problem for the underlying constitutional challenges. Ripeness prevents a court from entertaining claims that are “abstract or hypothetical.” *Monk v. Huston*, 340 F.3d 279, 282 (5th Cir. 2003) (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583, 586 (5th Cir. 1987)). Despite the pendency of the plaintiff physicians’ privileges applications, plaintiffs have clearly indicated that there is little likelihood of *any* of those requests being granted. *See supra* II.A. The outside notion that *all* of the physicians’ pending admitting privileges requests will be granted is not remotely plausible enough to cast doubt on the ripeness of the underlying constitutional issues.

Moreover, plaintiffs contend that the admitting privileges requirements themselves are unnecessary in and of themselves and are unconstitutional on that basis. *See* Dkt. 5-1 at 17 (arguing that the law is “medically unwarranted and unnecessary”). That claim does not appear to depend at all on whether pending admitting-privileges requests are granted.

Moreover, the State has an overriding interest in vindicating the constitutionality of its admitting-privileges law. Similar laws have already been challenged in Texas, Mississippi, Alabama, and elsewhere. *See Abbott II, supra; Currier, supra; Planned Parenthood Southeast, Inc. v. Strange*, __ F.Supp.2d __, 2014 WL 3809403 (M.D. Ala. Aug. 4, 2014); *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786 (7th Cir. 2013). Louisiana’s law is an important public health measure designed to protect the safety of women and improve the integrity of the medical profession. Admitting-privileges laws help improve “physician competency,” ensure “continuity of care,” optimize “patient information transfer and complication management,” and support “the ethical duty of care for the operating physician to prevent patient abandonment.” *Abbott*, 748 F.3 at 592 (quoting testimony of Dr. John Thorp). The identical Texas law, on which Louisiana’s law was modeled, has already been upheld by the Fifth Circuit. *Abbott, supra*. Louisiana, however, has a keen interest in removing any cloud upon the validity of its law, and this as-applied challenge is the proper vehicle to do so.

Finally, delaying resolution of the constitutional issues now will not serve judicial efficiency. The challenge will inevitably arise again, perhaps in the near

future, perhaps in several months. In defendants' view, the better course is to set the matter for a preliminary injunction hearing in 30 to 60 days, in order to allow the government defendants to properly constitute a documentary record in opposition to the voluminous record already amassed by plaintiffs. After the preliminary injunction hearing, the Court and the parties will be able to assess whether the matter needs to be set for a discovery schedule and an eventual trial on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2014, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s S. Kyle Duncan
S. Kyle Duncan
Attorney for Defendant Jimmy Guidry

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR WOMEN, on behalf of its patients, physicians, and staff; BOSSIER CITY MEDICAL SUITE, on behalf of its patients, physicians, and staff; CHOICE, INC., OF TEXAS d/b/a CAUSEWAY MEDICAL CLINIC, on behalf of its patients, physicians, and staff, JOHN DOE 1, M.D., and JOHN DOE 2, M.D.,

Plaintiffs,

v.

KATHY KLIEBERT, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals and MARK HENRY DAWSON, MD, in his official capacity as President of the Louisiana State Board of Medical Examiners,

Defendants.

Case No. 3:14-CV-525- JWD-
RLB

CONSOLIDATED WITH

WOMEN'S HEALTH CARE CENTER, INC. on behalf of its patients, physicians, and staff; DELTA CLINIC OF BATON ROUGE, INC., on behalf of its patients, physicians, and staff; JOHN DOE 5, M.D., on behalf of himself and his patients; and JOHN DOE 6, M.D., on behalf of himself and his patients,

Plaintiffs,

v.

KATHY KLIEBERT, in her official capacity as Secretary of the Louisiana Department of Health

Case No. 3:14-CV-597-JWD-
RLB

and Hospitals and MARK HENRY DAWSON, MD, in his official capacity as President of the Louisiana State Board of Medical Examiners,

Defendants.

PLAINTIFFS JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR WOMEN; BOSSIER CITY MEDICAL SUITE; AND CHOICE, INC., OF TEXAS d/b/a CAUSEWAY MEDICAL CLINIC STATUS CHART OF PENDING APPLICATIONS

During a telephonic status conference with the parties held on September 30, 2014, the Court requested Plaintiffs file certain information regarding the pending admitting privileges applications filed by their doctors. In the minute entries of those proceedings, the Court specified certain information to be provided, including:

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
Dr. John Doe 1	Willis-Knighton Health System	June 17, 2014	Application deemed withdrawn.	Letter from Willis-Knighton, dated July 28, 2014, requested additional information and stated that if there was no response by August 8, 2014, the application would be deemed withdrawn. Dr. John Doe 1 did not receive this letter until September 9, 2014.
	Minden Medical Center	July 25, 2014	Denied on September 3, 2014.	Letter states that Minden Medical Center “does not have a need for a satellite primary care physician at this time.”

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
	Christus Schumpert Hospital	August 15, 2014	Letter seeking additional information received on August 25, 2014. Additional information provided on September, 24, 2014.	
	University Health	n/a	April 8, 2014, Dr. Doe 1 reached a tentative agreement with the Chairman of Department of Family Medicine and was informed that an invitation to apply for privileges would be forthcoming.	May 1, 2014, Chairman of Department of Family Medicine advised Dr. Doe 1 that he had “met with resistance” within the department. Dr. Doe 1 has received no further communications from University Health.
Dr. John Doe 2	Willis Knighton Bossier City	May 12, 2014	August 11, 2014, Dr. Doe 2 received letter requesting additional documentation. Dr. Doe 2 provided the additional documentation, and Willis-Knighton confirmed receipt of this additional information on September 4, 2014.	
	Tulane Hospital	August 6, 2014 (filed pre-application required by Tulane before full application for submission will be provided to the doctor.)	Dr. Doe 2 received the full application from Tulane on September 9, 2014, which he expects to complete while he recovers from spinal surgery performed on September 12, 2014	

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
Dr. John Doe 4	Ochsner-Kenner Medical Center	August 6, 2014		

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2014, a copy of the foregoing has been served upon all counsel of record in this action by electronic service through the Court's CM/ECF system and by email.

/s/ Libby J. Greismann
Libby J. Greismann

dc-772800

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC d/b/a HOPE *
MEDICAL GROUP FOR WOMEN, on behalf of its * Case No. 3:14-CV-525
patients, physicians, and staff; BOSSIER CITY * (consolidated w/ 3:14-cv-597)
MEDICAL SUITE, on behalf of its patients, *
physicians, and staff; CHOICE, INC., OF TEXAS *
d/b/a CAUSEWAY MEDICAL CLINIC, on behalf *
of its patients, physicians, and staff; JOHN DOE 1, *
M.D.; JOHN DOE 2, M.D.; WOMEN’S HEALTH *
CARE CENTER, INC. on behalf of it patients, *
physicians, and staff; DELTA CLINIC OF BATON *
ROUGE, INC., on behalf of its patients, physicians, *
and staff; JOHN DOE 5, M.D., on behalf of himself *
and his patients; and JOHN DOE 6, M.D., on behalf *
of himself and his patients, *

Plaintiffs *

Versus *

KATHY KLIEBERT, in her official capacity as *
Secretary of the Department of Health and Hospitals; *
and MARK HENRY DAWSON, in his official *
capacity as President of the Louisiana State Board of *
Medical Examiners, *

Defendants *

* * * * *

MEMORANDUM REGARDING
STATUS OF PENDING APPLICATIONS FOR PRIVILEGES

Plaintiffs Women’s Health Care Center, Inc.; Delta Clinic of Baton Rouge, Inc.;
John Doe 5, M.D.; and John Doe 6, M.D. (collectively, “Plaintiffs”) submit this Memorandum
Regarding the Status of Pending Applications for Privileges in order to provide the information
requested by the Court at the Status Conference held in this matter on September 30, 2014 (R.
Doc. 45). As to the status of the applications that Dr. Doe 5 and Dr. Doe 6 have submitted for

admitting privileges at local hospitals, in order to attempt to comply with the requirements of H.B. 388, Plaintiffs represent the following:

Physician	Hospital	Date of Application	Action Taken on Application
Dr. Doe 5	Touro Infirmary in New Orleans	April 15, 2014	Courtesy Admitting Privileges granted on July 30, 2014
Dr. Doe 5	New Orleans East Hospital in New Orleans	April 15, 2014	No Action Taken
Dr. Doe 5	Woman's Hospital in Baton Rouge	April 15, 2014	On June 26, 2014, the hospital inquired as to a covering physician on staff for Dr. Doe 5, due to the hospital's residency requirements; to date, Dr. Doe 5 has been unable to secure a covering physician.
Dr. Doe 5	Baton Rouge General in Baton Rouge	July 15, 2014	No Action Taken
Dr. Doe 5	Lane Regional Medical Center in Baton Rouge	July 15, 2014	No Action Taken
Dr. Doe 6	East Jefferson General Hospital in New Orleans	August 29, 2014	On September 17, 2014, the hospital requested additional information from Dr. Doe 6, which he supplied; no further action has been taken.

As discussed during the Status Conference on September 30, 2014, Plaintiffs will update the foregoing and keep the Court informed as to any changes in the status of the applications for admitting privileges.

Respectfully submitted:

/s/Ellie T. Schilling

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Attorneys for Plaintiffs Women's Health Care
Center, Inc.; Delta Clinic of Baton Rouge, Inc.;
John Doe 5, M.D.; and John Doe 6, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2014, I electronically filed the foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/Ellie T. Schilling

Ellie T. Schilling

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, et al.,
Plaintiffs,

v.

KATHY KLIEBERT, et al.,
Defendants

No. 14-cv-525-JWD-RLB

c/w

No. 14-cv-597-JWD-RLB

ANSWER OF DEFENDANT KATHY KLIEBERT TO *JUNE MEDICAL SERVICES* AMENDED COMPLAINT

Defendant Kathy Kliebert, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals (“DHH”), makes this Answer to Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief (“Plaintiffs’ Amended Complaint”) in No. 14-cv-525, *June Medical Services LLC, et al. v. Kathy Kliebert, et al.*, filed August 26, 2014 [Doc. 14].

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant Kathy Kliebert, in her official capacity only, denies each and every allegation contained in Plaintiffs’ Amended Complaint except for those expressly admitted herein.

PRELIMINARY STATEMENT

1. Defendant admits the plaintiffs have filed a complaint for declaratory and injunctive relief challenging the constitutionality of Louisiana House Bill 388, Regular Session (2014), to be codified at La. Rev. Stat. § 40:1299.35.2 (“the Act”).

2. Defendant states that the Act referred to in the amended complaint is the best evidence of its content, and denies all allegations that conflict with the

language of the Act.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

5. Denied.

6. Defendant admits the plaintiffs have filed a complaint for declaratory and injunctive relief, but denies the plaintiffs are entitled to such relief or to any relief whatsoever.

JURISDICTION AND VENUE

7. Admitted.

8. The allegations contained in the amended complaint contain conclusions of law to which no response is required. To the extent a response may be deemed to be required, the allegations are denied.

9. Admitted.

PARTIES

10. Defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in the amended complaint, and therefore denies them.

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

DEFENDANTS

16. No response is necessary because Attorney General Caldwell has been dismissed from this lawsuit.

17. Defendant admits she is the DHH Secretary and that she is sued only in her official capacity. Defendant states that DHH's authority to regulate licensed abortion facilities is set forth in Title 40, Chapter 5, Part XVIII of the Louisiana Revised Statutes, and other applicable law. Defendant denies the allegations of the complaint to the extent they conflict with those legal provisions.

18. No response is necessary because Dr. Guidry has been dismissed from this lawsuit.

19. The allegations contained in paragraph 19 of the amended complaint pertain to another defendant, and no response is required from this defendant. To the extent a response may be deemed to be required, this defendant lacks knowledge or information sufficient to either admit or deny the allegations contained in paragraph 19 of the amended complaint, and therefore denies them.

FACTUAL ALLEGATIONS

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

21. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

24. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

25. Denied.

THE ACT AND ITS IMPACT

26. Defendant states that the Act referred to in the amended complaint is the best evidence of its content, and denies all allegations that conflict with the language of the Act.

27. Defendant states that the Act referred to in the amended complaint is the best evidence of its content, and denies all allegations that conflict with the language of the Act.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

29. Defendant lacks knowledge or information sufficient to form a belief about

the truth of the allegations, and therefore denies them.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

31. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

IRREPARABLE INJURY

33. Denied.

34. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

35. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

36. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies them.

37. Denied.

CLAIMS FOR RELIEF

COUNT I

(Procedural Due Process)

38. Defendant restates and realleges the preceding paragraphs of this answer as if fully set forth herein.

39. Denied.

COUNT II**(Substantive Due Process – Right to Privacy)**

40. Defendant restates and realleges the preceding paragraphs of this answer as if fully set forth herein.

41. Denied.

RELIEF REQUESTED

Defendant denies the plaintiffs are entitled to the relief requested, or to any relief whatsoever.

DEFENSES

Answering further, and in defense against plaintiffs' claims, defendant states:

42. There is neither factual nor legal support for injunctive relief.

43. The amended complaint does not state facts or claims upon which relief may be granted under the legal authority cited in the amended complaint or under any other law.

44. Plaintiffs' claims are not justiciable, insofar as they are not ripe and/or are moot.

45. Plaintiffs have not been harmed, nor are they in danger of harm, due to any acts, omissions, or conduct by defendant.

46. Defendant has not violated, and is not likely to violate, any rights of plaintiffs or their patients under any Louisiana or federal law.

47. Defendant is entitled to an award of their costs and attorneys' fees from plaintiffs individually under 42 U.S.C. § 1988.

Respectfully submitted,

/s S. Kyle Duncan
S. Kyle Duncan (La. Bar No. 25038)
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Email: mjohnsonlegal@gmail.com

*Counsel for Defendant Kathy Kliebert, in her official
capacity as Secretary of the Louisiana Department of
Health and Hospitals*

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2014, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s S. Kyle Duncan
S. Kyle Duncan

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, *et al.*

Plaintiffs,

v.

KATHY KLIEBERT, *et al.*

Defendants.

Case No. 3:14-CV-525- JWD-
RLB

**PLAINTIFFS JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR
WOMEN; BOSSIER CITY MEDICAL SUITE; AND CHOICE, INC., OF TEXAS d/b/a
CAUSEWAY MEDICAL CLINIC STATUS CHART OF PENDING APPLICATIONS**

Plaintiffs submit this Status Chart of Pending Applications pursuant to the Court's request for an update regarding pending admitting privileges applications. (Dkt. 73 and 86.) The Court has previously requested the following information, including:

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
Dr. John Doe 1	Willis-Knighton Health System	June 17, 2014	Application deemed withdrawn by the hospital, resubmitted on February 26, 2015.	Initial application deemed withdrawn. ¹
	Minden Medical Center	July 25, 2014	Denied on September 3, 2014.	Letter states that Minden Medical Center "does not have a need for a satellite primary care physician at this time."

¹ Dr. John Doe 1 received a letter from Willis-Knighton, dated July 28, 2014, requesting additional information and stating that if there was no response by August 8, 2014, the application would be deemed withdrawn. Dr. John Doe 1 did not learn of this deadline until September 9, 2014.

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
	Christus Schumpert Hospital	August 15, 2014	Letter seeking additional information received on August 25, 2014. Additional information provided on September, 24, 2014.	
	University Health	n/a	April 8, 2014, Dr. Doe 1 reached a tentative agreement with the Chairman of Department of Family Medicine and was informed that an invitation to apply for privileges would be forthcoming.	May 1, 2014, Chairman of Department of Family Medicine advised Dr. Doe 1 that he had “met with resistance” within the department. Dr. Doe 1 has received no further communications from University Health.
Dr. John Doe 2	Willis Knighton Bossier City	May 12, 2014	After submitting additional information requested by Willis Knighton, denied on November 19, 2014.	Letter dated November 19, 2014 ² from Willis Knighton states that “the data you submitted supports all of the outpatient procedures you perform, but does not support your request for hospital privileges.”
	Tulane Hospital	August 6, 2014 (filed pre-application required by Tulane before full application for submission will be provided to the doctor.) Full application	Still pending.	

² Counsel did not receive this letter until February 17, 2015.

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
		submitted in September 2014.		
Dr. John Doe 4	Ochsner-Kenner Medical Center	August 6, 2014	<p>Dr. John Doe 4 received a letter from Ochsner-Kenner Medical Center in October 2014, requesting additional information including materials previously attached to application. Dr. John Doe 4 submitted the requested information in October 2014.</p> <p>Dr. John Doe 4 received a letter from Ochsner-Kenner Medical Center, dated November 24, 2014, requesting previously submitted information and additional staff doctor reference. Dr. John Doe 4 did not receive the letter until February 2015.</p>	

Respectfully Submitted,

/s/ William E. Rittenberg

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Attorneys for Plaintiffs
June Medical Services LLC d/b/a Hope Medical
Group for Women, Bossier City Medical Suite,
Choice Inc., of Texas d/b/a Causeway Medical
Clinic, John Doe 1, M.D., and John Doe 2, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2015, a copy of the foregoing has been served upon all counsel of record in this action by electronic service through the Court's CM/ECF system and by email.

/s/ Hanna Abrams
Hanna Abrams

dc-785802

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, *et al.*

Plaintiffs,

v.

KATHY KLIEBERT, *et al.*

Defendants.

Case No. 3:14-CV-525- JWD-
RLB

**PLAINTIFFS JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR
WOMEN; BOSSIER CITY MEDICAL SUITE; AND CHOICE, INC., OF TEXAS d/b/a
CAUSEWAY MEDICAL CLINIC STATUS CHART OF PENDING APPLICATIONS**

Plaintiffs submit this Status Chart of Pending Applications pursuant to the Court’s request for an update regarding pending admitting privileges applications. (Dkt. 73 and 86.) The Court has previously requested the following information, including:

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Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
Dr. John Doe 1	Willis-Knighton Health System	June 17, 2014	Application deemed withdrawn by the hospital, resubmitted on February 26, 2015. Letter seeking additional information, including documentation of hospital admissions for the past 12 months, received March 11, 2015.	Initial application deemed withdrawn. ¹
	Minden Medical Center	July 25, 2014	Denied on September 3, 2014.	Letter states that Minden Medical Center “does not have a need for a satellite primary care physician at this time.”
	Christus Schumpert Hospital	August 15, 2014	Letter seeking additional information received on August 25, 2014. Additional information provided on September, 24, 2014. Application deemed withdrawn on December 17, 2014. Doctor informed orally that he should instead apply for caregiver privileges.	
	University Health	n/a	April 8, 2014, Dr. Doe 1 reached a tentative agreement with the Chairman of Department of Family Medicine and was informed that an invitation to apply for privileges would be	May 1, 2014, Chairman of Department of Family Medicine advised Dr. Doe 1 that he had “met with resistance” within the department. Dr. Doe 1 has received no further communications from

¹ Dr. John Doe 1 received a letter from Willis-Knighton, dated July 28, 2014, requesting additional information and stating that if there was no response by August 8, 2014, the application would be deemed withdrawn. Dr. John Doe 1 did not learn of this deadline until September 9, 2014.

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
			forthcoming.	University Health.
Dr. John Doe 2	Willis Knighton Bossier City	May 12, 2014	After submitting additional information requested by Willis Knighton, denied on November 19, 2014.	Letter dated November 19, 2014 ² from Willis Knighton states that “the data you submitted supports all of the outpatient procedures you perform, but does not support your request for hospital privileges.”
	Tulane Medical Center (“TMC”)	August 6, 2014 (filed pre-application required by Tulane before full application for submission will be provided to the doctor.) Full application submitted in September 2014.	Informed by letter dated February 24, 2015 that courtesy clinical privileges have been granted for the period March 1, 2015 – February 28, 2017.	N/A
Dr. John Doe 4	Ochsner-Kenner Medical Center	August 6, 2014	Dr. John Doe 4 received a letter from Ochsner-Kenner Medical Center in October 2014, requesting additional information including materials previously attached to application. Dr. John Doe 4 submitted the requested information in October 2014.	

² Counsel did not receive this letter until February 17, 2015.

Doctor	Hospital Name & Location	Date Application Filed	Action Taken, if any	Denial and reasons given, if any
			Dr. John Doe 4 received a letter from Ochsner-Kenner Medical Center, dated November 24, 2014, requesting previously submitted information and additional staff doctor reference. Dr. John Doe 4 did not receive the letter until February 2015.	

Respectfully Submitted,

/s/ William E. Rittenberg
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Attorneys for Plaintiffs

*June Medical Services LLC d/b/a Hope Medical
Group for Women, Bossier City Medical Suite,
Choice Inc., of Texas d/b/a Causeway Medical
Clinic, John Doe 1, M.D., and John Doe 2, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2015, a copy of the foregoing has been served upon all counsel of record in this action by electronic service through the Court's CM/ECF system and by email.

/s/ Kerry Jones

dc-788347

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September 25, 2015

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Judge John W. deGravelles
Russell B. Long Federal Building and United States Courthouse
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Re: June Medical Services LLC, et al. v. Kathy Kliebert- 3.14-cv-525-JWD-RLB

Dear Judge deGravelles:

On September 17, 2015, you asked Plaintiffs to provide the Court with an update regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 206.) Counsel for Plaintiffs has made inquiries in order to ascertain whether there are any changes in the status of the doctors' outstanding privileges applications, and we provide the following update to the Court.

We are not aware of any material changes to the status of any of the outstanding privileges applications of Louisiana abortion providers between the close of the hearing in this matter on June 29, 2015 and today. We have not identified any additional communications to Drs. John Doe 1, 2, and 4 from the hospitals where they have outstanding applications.

Plaintiffs also contacted the attorney that has previously served as a liaison with Drs. John Doe 5 and 6 to inquire about their pending privileges applications. We understand that Women's Hospital in Baton Rouge has communicated to Dr. John Doe 5 that his application will not be formally denied because he meets all of the criteria to obtain privileges except securing a covering physician. We also understand that, as of today, there have not been any changes in the status of Dr. Doe 6's pending privileges application.

We remain available to answer any questions the Court may have with respect to this update or the remaining privileges applications.

MORRISON | FOERSTER

Judge John W. deGravelles
September 25, 2015
Page Two

Sincerely,

/s/ Demme Doufekias

Demme Doufekias

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Kyle Duncan (via kduncan@duncanpllc.com)
Michael Johnson (via mjohnsonlegal@gmail.com)
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Counsel of Record via ECF filing system

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March 1, 2016

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DDoufekias@mofocomJudge John W. deGravelles
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Re: June Medical Services LLC, et al. v. Rebekah Gee- 3.14-cv-525-JWD-RLB

Dear Judge deGravelles:

On January 26, 2016, you ordered Plaintiffs to provide the Court with an update on the first of each month regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 216.) Counsel for Plaintiffs have made inquiries in order to ascertain whether there are any changes in the status of the doctors' outstanding privileges applications, and we provide the following update to the Court.

We are not aware of any material changes to the status of any of the outstanding privileges applications by Louisiana abortion providers between the last update filed with this Court on September 25, 2015 (Dkt. 209) and today. We have not identified any additional communications to Drs. Doe 1, 2, and 4 from the hospitals where they have outstanding applications.

Plaintiffs also contacted the attorney who has previously represented the clinics where Drs. Doe 5 and 6 work to inquire about their pending privileges applications. We understand that, as of today, there have been no changes in the status of Drs. Doe 5 and 6's pending privileges applications, since the last update filed with this Court.

Sincerely,

/s/ Demme Doufekias

Demme Doufekias

cc: Ilene Jaroslaw (via ijaroslaw@reprorights.org)
Kyle Duncan (via KDuncan@Schaerr-Duncan.com)
Michael Johnson (via mjohnsonlegal@gmail.com)
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Suite 355
Baton Rouge, LA 70801

Re: June Medical Services LLC, et al. v. Rebekah Gee- 3.14-cv-525-JWD-RLB

Dear Judge deGravelles:

On January 26, 2016, you ordered Plaintiffs to provide the Court with an update on the first of each month regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 216.) Counsel for Plaintiffs have made inquiries, including contacting the attorney who has previously represented the clinics where Drs. Doe 5 and 6 work, in order to ascertain whether there are any changes in the status of the doctors' outstanding privileges applications. We provide the following update to the Court.

We are not aware of any material changes to the status of any of the outstanding privileges applications by Louisiana abortion providers between the last update filed with this Court on March 1, 2016 (Dkt. 240) and today.

Sincerely,

/s/ Demme Doufekias

Demme Doufekias

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Kyle Duncan (via KDuncan@Schaerr-Duncan.com)
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May 2, 2016

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Suite 355
Baton Rouge, LA 70801

Re: June Medical Services LLC, et al. v. Rebekah Gee- 3.14-cv-525-JWD-RLB

Dear Judge deGravelles:

On January 26, 2016, you ordered Plaintiffs to provide the Court with an update on the first of each month regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 216.) Counsel for Plaintiffs have made inquiries, including contacting the attorney who has previously represented the clinics where Drs. Doe 5 and 6 work, in order to ascertain whether there are any changes in the status of the doctors' outstanding privileges applications. We provide the following update to the Court.

We are not aware of any material changes to the status of any of the outstanding privileges applications by Louisiana abortion providers between the last update filed with this Court on April 1, 2016 (Dkt. 245) and today. Further, in light of the closure of Causeway Medical Clinic, Dr. Doe 4 no longer intends to pursue hospital admitting privileges.

Sincerely,

/s/ Demme Doufekias

Demme Doufekias

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Kyle Duncan (via KDuncan@Schaerr-Duncan.com)
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June 1, 2016

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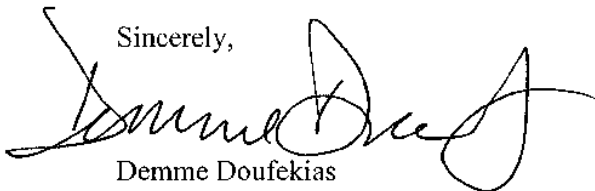
Re: June Medical Services LLC, et al. v. Rebekah Gee- 3,14-cv-525-JWD-RLB

Dear Judge deGravelles:

On January 26, 2016, you ordered Plaintiffs to provide the Court with an update on the first of each month regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 216.) Counsel for Plaintiffs have made inquiries, including contacting the attorney who has previously represented the clinics where Drs. Doe 5 and 6 work, in order to ascertain whether there are any changes in the status of the doctors' outstanding privileges applications. We provide the following update to the Court.

We are not aware of any material changes to the status of any of the outstanding privileges applications by Louisiana abortion providers between the last update filed with this Court on May 2, 2016 (Dkt. 246) and today. Further, in light of the closure of Causeway Medical Clinic, Dr. Doe 4 no longer intends to pursue hospital admitting privileges.

Sincerely,



Demme Doufekias

cc: Ilene Jaroslaw (via ijaroslaw@reprorights.org)
 Kyle Duncan (via KDuncan@Schaerr-Duncan.com)
 Michael Johnson (via mjohnsonlegal@gmail.com)
 Steven Aden (via saden@alliancedefendingfreedom.org)

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August 1, 2016

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Judge John W. deGravelles
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Baton Rouge, LA 70801

Re: June Medical Services LLC, et al. v. Rebekah Gee- 3:14-cv-525-JWD-RLB

Dear Judge deGravelles:

On January 26, 2016, you ordered Plaintiffs to provide the Court with an update on the first of each month regarding the status of the admitting privileges applications of Louisiana's six abortion providers. (Dkt. 216.) Counsel for Plaintiffs are not aware of any material changes to the status of any of the outstanding privileges applications by Louisiana abortion providers between the last update filed with this Court (Dkt. 247) and today. Further, in light of the closure of Causeway Medical Clinic, Dr. Doe 4 no longer intends to pursue hospital admitting privileges.

Since our last update to this Court, on June 29, 2016 (Dkt. 248), two events have occurred that we would like to bring to this Court's attention:

1. On July 26, 2016, the Court of Appeals for the Fifth Circuit informed counsel that it was removing from abeyance Defendants' appeal of this Court's decision granting a preliminary injunction. The Fifth Circuit has resumed the briefing schedule for that appeal as of the date of the letter. Counsel for all parties conferred regarding whether that appeal continued to be proper in light of the Supreme Court's decision last month in *Whole Woman's Health v. Hellerstedt*, 579 U.S. ___, Docket No. 15-274 (2016). Counsel for Plaintiffs has also informed counsel for Defendant that they intended to ask this Court to enter a permanent injunction in light of the *Hellerstedt* decision, which would effectively moot the appeal of the preliminary injunction order. The parties agreed that a status conference with the Court may be beneficial to discuss the current posture of the case and whether any additional briefing or findings from the Court are necessary before a permanent injunction can be issued. Therefore, by this letter, the parties jointly request such a status conference. Counsel for all parties are available at the Court's convenience any day this week except Monday, August 1, 2016. As has been our practice

MORRISON | FOERSTER

Judge John W. deGravelles
August 1, 2016
Page Two

in the past, counsel for Plaintiffs are happy to host the call and will circulate a dial-in to all parties once the date and time of the status conference are set.

2. On July 1, 2016, substantially the same Plaintiffs as here filed a second, related case captioned *June Medical Svcs. LLC d/b/a HOPE Medical Group for Women, et al. v. Rebekah Gee, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals, et al.*, Case No. 3:16-cv-00444-BAJ-RLB. In addition to involving substantially the same Plaintiffs as in the case before this Court, the case was brought against the same, as well as additional, Defendants, as this case. Furthermore, the new case involves many of the same facts regarding the operation and capacity of Louisiana's abortion providers, the availability of abortion in the state, and the burdens created by the new legislation on the constitutionally protected right of Louisiana women to seek an abortion.

Sincerely,



Demme Doufekias

cc: Ilene Jaroslaw (via ijaroslaw@reprorights.org)
Kyle Duncan (via KDuncan@Schaerr-Duncan.com)
Michael Johnson (via mjohnsonlegal@gmail.com)
Steven Aden (via saden@alliancedefendingfreedom.org)

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, *et al.*,

Plaintiffs,

v.

DR. REBEKAH GEE, in her official
capacity as Secretary of the Louisiana
Department of Health and Hospitals,

Defendant.

Civil Action No. 3:14-CV-525-JWD-RLB

**JOINT STIPULATION AND [PROPOSED] ORDER
REGARDING CAUSEWAY MEDICAL CLINIC**

Dr. Rebekah Gee, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals (hereinafter, “DHH”), through her attorney, and Plaintiffs, through their attorneys, file this Joint Stipulation and respectfully represent to the Court as follows:

1. Subsequent to the Court’s January 26, 2016 preliminary injunction order, Dr. John Doe 4 did not perform abortions at Causeway Medical Clinic (“Causeway”).
2. On February 12, 2016, Causeway published its closure notice in The Times-Picayune of New Orleans and on NOLA.com.
3. Causeway has notified the Louisiana Department of Health and Hospitals that it ceased business effective February 10, 2016 and has surrendered its license.

Dated: September 22, 2016

Respectfully submitted,

/s/ William E. Rittenberg

William E. Rittenberg
Louisiana State Bar No. 11287

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Group for Women, Bossier City Medical Suite,
Choice Inc. of Texas d/b/a Causeway Medical Clinic,
John Doe 1, M.D., and John Doe 2, M.D.

/s/ S. Kyle Duncan
S. Kyle Duncan
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Attorney for Defendant Dr. Rebekah Gee
in her official capacity as Secretary of the Louisiana
Department of Health and Hospitals

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, *et al.*,

Plaintiffs,

v.

DR. REBEKAH GEE, in her official
capacity as Secretary of the Louisiana
Department of Health and Hospitals,

Defendant.

Civil Action No. 3:14-CV-525-JWD-RLB

[PROPOSED] ORDER

The above Joint Stipulation having been considered and good cause appearing therefore, IT
IS SO ORDERED this _____ day of _____, 2016.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd of September, a copy of the foregoing Joint Stipulation and [Proposed] Order Regarding Causeway Medical Clinic has been served upon all counsel of record by email.

/s/ Zoe Levine

Zoe Levine

CORRECTED

April 23, 2017

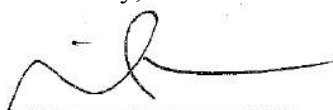
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777 Florida St. Suite 355
Baton Rouge, LA 70801

Re: *June Medical Services LLC, et al. v. Rebekah Gee, et al.*, 3:14-cv-525-JWD-RLB

Dear Judge deGravelles:

On or about Thursday, March 30, 2017, Plaintiff Bossier City Medical Suite (“Bossier”) ceased business and returned its license, by mail, to the Louisiana Department of Health. Upon information and belief, Bossier’s physician, **John Doe 2, M.D.**, intends to continue providing abortion care to Louisiana women at a clinic yet to be determined.

Sincerely,



David Brown
Counsel for Plaintiffs

cc: Demme Doufekias (via DDoufekias@mofa.com)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

JUNE MEDICAL SERVICES LLC, *et al.*,

Plaintiffs,

v.

REBEKAH GEE,

Defendant.

Civil Action No. 3:14-CV-525- JWD-RLB

DECLARATION OF DR. JOHN DOE 2, M.D.

1. I, DR. JOHN DOE 2, M.D., declare under penalty of perjury that the following statements are true and correct.

2. Until its closure last month, I provided abortion care at Bossier City Medical Suite (“Bossier”), in Bossier City, Louisiana.

3. Since Bossier has closed, I have entered into a working agreement with Hope Medical Group for Women (“Hope”), in Shreveport, Louisiana.

4. Under that agreement, I work providing abortion care at Hope *pro re nata*, filling in on days when Hope’s primary physicians, Dr. John Doe 1 and Dr. John Doe 3, are absent due to scheduled time off, illness, the demands of their other practices, or for other reasons.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on April 21, 2017.

/s/ Dr. John Doe 2
JOHN DOE 2, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on April 23, a copy of the foregoing Declaration of Dr. John Doe, 2 M.D., was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ William E. Rittenberg _____

William E. Rittenberg

Louisiana State Bar No. 11287

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