

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.

DIVISION

JUNE MEDICAL SERVICES, LLC D/B/A HOPE MEDICAL GROUP FOR WOMEN,  
KATHALEEN PITTMAN, AND MEDICAL STUDENTS FOR CHOICE, ON BEHALF OF  
ITSELF AND ITS MEMBERS

VERSUS

JEFF LANDRY, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF  
LOUISIANA, AND COURTNEY N. PHILLIPS, IN HER OFFICIAL CAPACITY AS  
SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY AND PERMANENT INJUNCTION ENJOINING THE  
IMPLEMENTATION OR ENFORCEMENT OF LA. R.S. §§ 40:1061, 14:87.7, AND  
14:87.8**

**NOW INTO COURT**, through undersigned counsel, comes June Medical Services, LLC (d/b/a/ Hope Medical Group for Women), Kathaleen Pittman, and Medical Students for Choice, on behalf of itself and its members, who file this Verified Petition for Temporary Restraining Order (“TRO”) and Preliminary and Permanent Injunction to enjoin the implementation or enforcement of La. R.S. §§ 40:1061, 14:87.7, and 14:87.8, and who respectfully aver as follows:

**NATURE OF ACTION**

**1.**

Plaintiffs Hope Medical Group for Women (“Hope”), Kathaleen Pittman, and Medical Students for Choice (“MSFC”) file this lawsuit because Louisiana’s criminal abortion bans, La. R.S. § 40:1061, as amended by Act 545 (the “First Trigger Ban”); La. R.S. § 14:87.7, as enacted by Act 545 (the “Second Trigger Ban”); and La. R.S. § 14:87.8, as enacted by Act 545 (the “Third Trigger Ban”) (together with the First Trigger Ban and Second Trigger Ban, the “Trigger Bans”), are unconstitutional.

**2.**

The Trigger Bans, individually and when read as a statutory schema, are void for vagueness because they: (a) fail to provide notice of what conduct is prohibited, what exceptions are permitted, and what penalties attach and (b) do not provide notice of *when* any one of the Trigger Bans, or all of them collectively, are actually in force while simultaneously purporting to be immediately effective if, among other things, *Roe v. Wade* is overruled. The Trigger Bans must

be struck down as vague because they fail to provide constitutionally guaranteed notice of exactly *what* conduct is prohibited, if any, and when.

3.

The Trigger Bans are unconstitutionally vague for the separate and independent reason that they fail to provide *any* guidelines or safeguards to protect against arbitrary enforcement as required by the Due Process Clause of the Louisiana Constitution. While the Trigger Bans purport to be in force immediately upon the overruling of *Roe v. Wade* and the satisfaction of additional criteria stated in the text, there is no process in place to determine that any one of the Trigger Bans has, in fact, gone into effect.

4.

Indeed, this unconstitutional lack of safeguards became immediately apparent on the day *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022) ("*Dobbs*") was issued. Multiple state and local officials publicly stated conflicting, and inconsistent, interpretations of the Trigger Bans: (a) The Attorney General tweeted that the Trigger Ban was in full force, but failed to identify *which* Trigger Ban he was talking about; (b) later that same day, at a press conference, he acknowledged that the state of affairs was unclear and he would need to review *Dobbs* more closely to determine what had been triggered; (c) the President of the New Orleans City Council publicly questioned whether the Trigger Bans had been triggered and were in effect; (d) the Orleans Parish District Attorney stated that he would not enforce any Trigger Ban; and (e) the Louisiana Department of Health stated that it believed all three Trigger Bans were in effect despite the fact that the Governor had indicated six days earlier that he believed that only one Trigger Ban existed. Because the Trigger Bans lack constitutionally required safeguards to prevent arbitrary enforcement, they are void for vagueness, and they therefore must be struck down for this separate and independent reason.

5.

The Trigger Bans also improperly delegate legislative power—that is, the power to say what the law is and when it is in effect—to everyone and no one at the same time. The Louisiana Constitution vests legislative power solely with the Legislature, prohibiting any other entity or individual from saying what the law is. La. Const. art. III, §§ 1–2. The Trigger Bans, read on their face, empower a local citizen to determine that the Trigger Bans are in effect and to effectuate a citizen's arrest without a warrant. Moreover, the Attorney General's apparent belief that he is

charged with the responsibility of determining when the Trigger Bans are in effect is unconstitutional because, were he correct (which he is not), it would be an improper delegation of legislative power. The Trigger Bans must be struck down for this separate and independent reason, as well.

**6.**

Enforcement of the hopelessly vague Trigger Bans will irreparably harm Plaintiffs by violating their constitutional rights as guaranteed by Article I, Section 2 of the Louisiana Constitution. Illegal enforcement of the Trigger Bans would also violate the non-delegation requirements set forth in Article II, Section 2 of the Louisiana Constitution.

**7.**

Accordingly, Plaintiffs seek injunctive relief pursuant to La. Code Civ. Proc. Art. 3601, *et seq.* Specifically, Plaintiffs seek a TRO, and after due proceedings, a preliminary injunction followed by a permanent injunction, enjoining the enforcement or implementation of the Trigger Bans.

**PARTIES**

**8.**

Plaintiff Hope is a reproductive health clinic located in Shreveport, Louisiana, that has provided abortion care for the last 40 years. Hope is one of only three abortion clinics in Louisiana and the only reproductive healthcare clinic in the northern region of the state.

**9.**

Until June 24, 2022, Hope provided two types of abortion care: medication abortion up to nine weeks since a woman's last menstrual period, and in-clinic procedural abortion up to 16 weeks, 6 days last menstrual period. In addition to providing abortion care, Hope provides pregnancy testing and counseling, contraception, education, ultrasounds, as well as referrals for prenatal care, treatment of sexually transmitted infections, and adoption.

**10.**

Plaintiff Kathaleen Pittman is the Administrator of Hope. In that role, Ms. Pittman manages the day-to-day operations of the clinic, including facilitating the provision of abortion services.

**11.**

Plaintiff Medical Students for Choice (“MSFC”) is a not-for-profit organization that seeks to ensure abortion remains safe and legal in the United States and abroad. MSFC is composed of individual members, organized into chapters located at medical school campuses and residency programs globally, including at Tulane University School of Medicine in New Orleans. MSFC’s Louisiana chapter includes medical students and residents who perform or assist in abortion care in New Orleans, and elsewhere in Louisiana, and who plan to do so in the foreseeable future.

**12.**

Defendant Jeff Landry is the Attorney General of the state of Louisiana and is sued in his official capacity. He has asserted the authority, as Attorney General, to enforce the laws challenged in this lawsuit.

**13.**

Defendant Courtney Phillips is the Secretary of the Louisiana Department of Health and is sued in her official capacity. She has asserted the authority, as the Secretary of the Department Health, to issue cease and desist letters under the laws challenged in this suit.

**JURISDICTION AND VENUE**

**14.**

Jurisdiction and venue are proper in this Court, pursuant to La. Const. V, § 16 and La. R.S. § 13:5104(A).

**15.**

Plaintiff MSFC has a chapter at Tulane University School of Medicine in New Orleans, Louisiana, and Louisiana State University Health New Orleans School of Medicine in New Orleans. Individuals in these chapters perform or assist in the performance of abortions in the state, including in New Orleans, and plan to do so in the foreseeable future. Accordingly, MSFC’s members may be subject to illegal enforcement of the Trigger Bans in Orleans Parish where conflicting statements have been issued by the Attorney General and the District Attorney concerning which Trigger Bans, if any, are in effect, and will or will not be enforced. Accordingly, the cause of action arises in Orleans Parish and jurisdiction and venue lie with this Court. La. R.S. § 13:5104(A).

**16.**

Plaintiffs Hope and Ms. Pittman may be joined in this Petition based on ancillary venue.

*See, e.g., Shreveport Citizens For Good Gov't v. City of Shreveport*, 40, 570 (La. App. 2 Cir. 9/9/05); 910 So. 2d 482, 484.

### **PLAINTIFFS' STANDING**

#### **17.**

Plaintiff Hope has standing to challenge the Trigger Bans because the Trigger Bans prohibit the conduct of a “person” (La. R.S. §§ 40:1061, 14:87.7, 14:87.8), and Louisiana’s criminal statutes define “person” as including “a body of persons, whether incorporated or not.” La. R.S. § 14:2. Accordingly, the Trigger Bans could be directly enforced against Hope in its institutional capacity in violation of its constitutional rights, which necessarily subjects Hope to the threat of irreparable injury.

#### **18.**

Plaintiff Kathaleen Pittman has standing to challenge the Trigger Bans as a person who, in her duties as Administrator of Hope, assists with abortion procedures. Accordingly, the Trigger Bans could be directly enforced against Ms. Pittman in violation of her constitutional rights, which subjects Ms. Pittman to the threat of irreparable injury.

#### **19.**

Plaintiff MSFC has standing to sue both on its own behalf and on behalf of its members as it meets all the requirements for associational standing: (a) MSFC’s members could bring the suit separately since they currently assist in or perform abortions in Louisiana and plan to do so in the foreseeable future; (b) the suit is consistent with MSFC’s goal to protect and provide access to reproductive care, including abortion care; and (c) the participation of individual members is not necessary or required for proper adjudication of the action.

### **FACTUAL BACKGROUND**

#### **The First Trigger Ban and the Trigger**

#### **20.**

In 2006, Louisiana passed La. R.S. § 40:1061 (the “First Trigger Ban”), which seeks to, among other things, criminalize virtually all abortions at some unidentified, future date if the United States Supreme Court were to issue certain rulings related to abortion, including for

example, overruling *Roe v. Wade*. The First Trigger Ban does not use the word “abortion,” but specifically prohibits it:

No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

La. Acts 2006, No. 467, §1 (codified at La. R.S. § 40:1061(C)).

**21.**

The First Trigger Ban does not include any exceptions for rape or incest, providing only a small carve-out for narrowly defined medical emergencies:

It shall not be a violation of Subsection C of this Section for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

La. R.S. §§ 40:1061(C), 1061.23.

**22.**

The First Trigger Ban imposes criminal penalties. Section 1061(D) of the First Trigger Ban, as amended in 2022, states: “Any person in violation of this Section shall be prosecuted pursuant to the effective provisions of R.S. 14:87.7, and shall be subject to the penalties provided in R.S. 40:1061.29.” La. R.S. § 1061(D). It is entirely unclear what it means for the First Trigger Ban to be “prosecuted pursuant to the effective provisions” of one provision but “subject to the penalties” of another, but it appears to mean that the penalties in La. R.S. § 40:1061.29 apply. That provision imposes a fine of not more than \$1,000 or a maximum of two years’ imprisonment, or both. La. R.S. § 40:1061.29.<sup>1</sup>

**23.**

When enacted in 2006, the Trigger Ban did not prohibit any conduct, meaning it did not require any abortion care providers or patients to change their behavior to stop providing or seeking abortion care. Instead, it included a trigger provision purporting to identify the circumstances

---

<sup>1</sup> Prior to its recent amendment, the Trigger Ban contained similar language citing to the “effective provisions” of La. R.S. § 14:87, a different, now purportedly repealed, criminal statute.

under which the First Trigger Ban would become effective and outlaw abortion. *Id.* § 40:1061(A) (the “Trigger”). Specifically, the Trigger stated:

The provisions of this Act shall become effective immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:

(1) Any decision of the United States Supreme Court which reverses, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby, restoring to the state of Louisiana the authority to prohibit abortion.

(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit abortion.

La. R.S. § 40:1061(A).

#### 24.

This year, in anticipation of the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (“*Dobbs*”), the Louisiana Legislature passed Senate Bill 342, now Act 545, which, among other things, amended the Trigger, changing some of its language and adding a provision directly citing *Dobbs*. Act 545 at 13, 2022 Leg., Reg. Sess. (La. 2022). Act 545 became law on June 18, 2022, just six days before the opinion in *Dobbs* was issued.

#### 25.

Changes to the Trigger, as amended by Act 545, are noted in bold and strikethrough below:

The provisions of this Act shall become effective immediately upon, and to the extent permitted, by the occurrence of any of the following circumstances:

1. Any decision of the ~~United States Supreme Court~~ **Supreme Court of the United States** which ~~reverses~~ **overrules**, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed. 2d 147 (1973); thereby restoring to the state of Louisiana the authority to prohibit **or limit** abortion.

2. Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the state of Louisiana the authority to prohibit **or limit** abortion.

**3. A decision of the Supreme Court of the United States in the case of *Dobbs v. Jackson Women's Health Organization*, Docket No. 19-1392, which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), thereby restoring to the state of Louisiana the authority to prohibit or limit abortion.**

Act 545 at 13 (codified at La. R.S. § 40:1061(A)).

#### The Second and Third Trigger Bans Enacted by Act 545

#### 26.

Act 545 not only amends the Trigger, but also purports to repeal the portion of the Trigger Ban previously contained in La. R.S. § 14:87, and then enacts two separate abortion trigger bans,

La. R.S. § 14:87.7 (the “Second Trigger Ban”) and La. R.S. § 14:87.8 (the “Third Trigger Ban,” and together with the First Trigger Ban and Second Trigger Ban, the “Trigger Bans”). The Second and Third Trigger Bans contain essentially the same Trigger as the First Trigger Ban (La. R.S. § 40:1061(A), as amended by Act 545), although the Trigger in the Third Trigger Ban inexplicably contains an additional word (“regulate”) in its first triggering condition that the Trigger in the First and Second Trigger Bans do not contain. *Compare* La. R.S. § 14:87.7(F)(1) and § 40:1061(A)(1), *with* 14:87.8(F)(1).

**27.**

In his signing statement, the Governor of Louisiana did not acknowledge the Second or Third Trigger Bans, instead suggesting that Act 545 only amended the exceptions and prohibitions of the First Trigger Ban:

With the enactment of Senate Bill 342, the list of exceptions to the abortion prohibition in R.S. 40:1061 [the First Trigger Ban] is expanded to include: (1) when a medical procedure is performed with the intent to save the life or preserve the health of an unborn child, (2) when medical procedures are performed after a pregnant woman miscarries, (3) treatment and removal of an ectopic pregnancy, and (4) when a medical procedure is performed to remove an unborn child with an irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. Although Senate Bill 342 [i.e. Act 545] did not add rape and incest to the two existing exceptions in R.S. 40:1061, it did clarify that pregnancy and the life of an unborn child begin at implantation, rather than at fertilization under the law as enacted in 2006, and clearly allows for emergency contraception to be administered to victims of rape and incest prior to when a pregnancy can be clinically diagnosed.

The Governor’s signing statement is filed contemporaneously herewith as Ex. 3 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs’ Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

**28.**

The Second Trigger Ban states that: “It shall be unlawful for a physician or other person to perform an abortion, with or without the consent of the pregnant female” and sets a mandatory minimum of one-year imprisonment and up to ten years for any violation and imposes mandatory fines of not less than \$10,000 and up to \$100,000 for any violation. La. R.S. § 14:87.7.

**29.**

The Third Trigger Ban similarly states: “It shall be unlawful for a physician or other person to perform a late term abortion, with or without the consent of the pregnant female.” A “late term abortion” is defined as “performance of an abortion when the gestational age of the unborn child



is fifteen weeks or more.” La. R.S. § 14.87.1(16). The Third Trigger Ban sets a mandatory minimum of one-year imprisonment and up to fifteen years for any violation, in addition to a fine of no less than \$20,000 and up to \$200,000 for any violation. *Id.* § 14:87.8.

### 30.

Accordingly, the First and Second Trigger Bans purport to ban abortion regardless of gestational age, while the Third Trigger Ban purports to ban abortion after 15-weeks gestational age. Despite the fact that the First and Second Trigger Bans both appear to prohibit the same conduct (and the Third Trigger Ban overlaps with both after fifteen weeks gestational age), the three Trigger Bans all have different penalty provisions. The First Trigger Ban appears to provide for a maximum fine of \$1,000 and a maximum term of imprisonment of two years (La. R.S. § 40:1061.29, § 40:1061(D)); the Second Trigger Ban provides for a fine between \$10,000 and \$100,000 and a mandatory term of imprisonment between one year and ten years (La. R.S. § 14:87.7(C)); and the Third Trigger Ban provides for a fine between \$20,000 and \$200,000 and a mandatory term of imprisonment between one and 15 years (La. R.S. § 14:87.7(B)).

### Other Abortion Laws in Louisiana’s Statute Books

### 31.

The Legislature has also enacted a six-week gestational age ban that prohibits abortion “when a fetal heartbeat has been detected.” La. Stat. Ann. § 40:1061.1.3 (the “Six Week Ban”). The Six Week Ban identifies yet another trigger, stating that it “shall become effective upon a final decision of the United States Court of Appeals for the Fifth Circuit upholding the Act that originated as Senate Bill 2116 of the 2019 Regular Session of the Mississippi Legislature.” *Id.* § 40:1061.1.3(A)(1)(b); La. Acts 2019, No. 31, § 2.

### 32.

Using different triggering language, the Six Week Ban states that it is repealed if the First Trigger Ban becomes effective:

The provisions of this Section are hereby repealed in favor of the provisions of La. R.S. § 40:1061 immediately upon and to the extent that either: (1) A decision of the United States Supreme Court upholds the authority of each of the several states of the United States or of the state of Louisiana to prohibit elective abortions. (2) An amendment to the Constitution of the United States of America is adopted that restores to each of the several states of the United States or to the state of Louisiana the authority to prohibit elective abortions.

La. R.S. § 40.1061.1.3(F).

## State Officials' Conflicting Statements About the Effectiveness of the Trigger Bans

### 33.

On June 24, 2022, shortly after the Supreme Court issued *Dobbs*, the Attorney General announced that the Trigger Ban is in effect. Specifically, at 9:37 AM CDT, Defendant Landry tweeted: "Because of #SCOTUS ruling in #Dobbs, Louisiana's trigger law banning #abortion is now in effect. #lagov." AG Jeff Landry (@AGJeffLandry), Twitter (June 24, 2022, 9:37 AM), <https://twitter.com/AGJeffLandry/status/1540343439086190592>. He also tweeted that: "Louisiana's trigger law banning abortion is now in effect. As Attorney General I will defend it." AG Jeff Landry (@AGJeffLandry), Twitter (June 24, 2022, 9:54 AM), <https://twitter.com/JeffLandry/status/1540347585457692675>. The Attorney General's tweets are filed contemporaneously herewith as Ex. 4 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs' Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

### 34.

The Attorney General's tweets did not identify which of the Trigger Bans he claimed to be in effect, nor did they identify which set of penalties or exceptions to the prohibited conduct are in effect. Immediately after his tweets, the Attorney General posted a press release on his website stating that "Louisiana's trigger law banning abortion is now in effect," hyperlinking the 2006 (and thus the unamended) version of the First Trigger Ban. The Attorney General's Press Release is filed contemporaneously herewith as Ex. 5 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs' Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

### 35.

Later that day, the Attorney General held a press conference where he stated that: (1) the "Trigger Laws were always designed to be able to allow the laws that were in place prior, that may have been struck down by the court because of, Roe to then be enacted. And so that's where we're going to be looking through *to ensure that we can enforce those particular laws*," and (2) "*[W]hat we will be doing from the Attorney General's office is again, going through the laws, and being able to put out a self-explanation*. We do it all the time, right. We go out there, we post things on our website so that our citizens in this state are informed as to exactly what the law is. *So if you'll give us a little time, we'll be more than happy to be able to get those types of answers and*

*some particulars out to the public.*” A transcript of the Attorney General’s speech is filed contemporaneously herewith as Ex. 6 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs’ Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

36.

When asked if the Attorney General believed that abortion clinics should be shut down in Louisiana, he provided the following answer:

Mr. Landry: Well, Tyler, it was always my position that those clinics should be shut down. [Cheers] If I had wanted them open, I wouldn’t be standing before you.

Audience member: Well, how do you shut them down?

AG Landry: Yeah! Well [stutters] exactly – how mean look again I think that we will be – we – look: I think it takes time, I think it’s in – this is an important day, right? We should make sure that we move – look. We want everyone’s legal rights to be protected – everyone, because that’s how America is. It’s how it’s supposed to be. ***And we’re gonna make sure that we comb through, and we enforce the laws that are on the books based upon this decision.*** It’s a big decision! I mean not only because it’s a great decision, ***but it’s 150 pages of decision as well. So we’ll be going through those and putting some information out at that time.***

Schilling Aff. Ex. 6 at 4–5 (emphasis added).

37.

Also on June 24, 2022, around 12:05 PM CDT, Helena Moreno, the President of the New Orleans City Council released a statement on Instagram explaining that: “We believe there are open legal questions about the automatic-trigger provisions of Louisiana’s abortion laws, which, unlike virtually all other trigger states, do not contain any certification mechanism for determining whether the triggering event has occurred and when the bans take effect,” including that “***we question whether the abortion ban is even currently in effect.***” Helena Moreno (@helenamorenola), Instagram (June 24, 2022, 12:05 PM), <https://www.instagram.com/p/CfMh6RjrENw/> (emphasis added). She further stated that: “Given these legal uncertainties, but predominantly due to the dangerous implications to women’s health, we have urged our District Attorney Jason Williams not to prosecute patients or physicians. We appreciate him emphatically agreeing to our request.” *Id.* Councilwoman Moreno’s post is filed contemporaneously herewith as Ex. 7 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs’ Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

38.

On June 24, 2022, Orleans Parish District Attorney Williams affirmed this position, tweeting, “[i]t would not be wise or prudent to shift our priority from tackling senseless violence happening in our city to investigating the choices women make with regard to their own bodies. The Supreme Court’s decision to overturn Roe does not change that.” New Orleans District Attorney Jason Williams (@orleansparishda), Twitter (June 24, 2022, 2:26 PM), <https://twitter.com/orleansparishda/status/1540416074272874498>. District Attorney Williams’s post is filed contemporaneously herewith as Ex. 8 to the Affidavit of Ellie Schilling, filed in support of Plaintiffs’ Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

39.

On the evening of June 24, 2022, Hope received a letter from LDH stating:

Through this letter you are hereby notified that today, the U.S. Supreme Court issued its ruling in *Dobbs v. Jackson Women’s Health Organization* (597 U.S. \_\_\_ (2022)), which held that the U.S. Constitution does not confer a right to abortion, that *Roe* and *Casey* are overruled and that the authority to regulate abortion is returned to the people and their elected representatives. ***Therefore, Louisiana Revised Statute 40:1061 is now in effect and enforceable. In addition, relevant provisions of Acts 2022, No. 545 of the 2022 Regular Legislative Session are also in effect today, June 24, 2022.*** The Louisiana Department of Health (LDH) expects your clinic to abide by the Louisiana laws on abortion.

(Emphasis added). Notably, unlike Governor Edwards’s signing statement, suggesting that Act 545 simply amended and expanded the First Trigger Ban, this letter states that the First, Second, and Third Trigger Bans are all “in effect” as of June 24, 2022. The letter Hope received from LDH is filed contemporaneously herewith as Ex. 1 to the Affidavit of Kathaleen Pitman, filed in support of Plaintiffs’ Motion for Entry of a Temporary Restraining Order and Application for Preliminary Injunction.

**The Trigger Bans Are Unconstitutionally Vague**

40.

The First, Second, and Third Trigger Bans are all unconstitutionally vague, and the Court should enjoin their enforcement.

41.

A statute is void for vagueness if *either*: (1) ordinary citizens do not have “adequate notice that certain contemplated conduct is proscribed and punishable by law” *or* (2) the statute lacks

“adequate standards” for “determining the guilt or innocence of an accused.” *State v. Dousay*, 378 So. 2d 414, 416 (La. 1979). “The constitutional requirement of definiteness is satisfied when the language of a criminal enactment has a generally accepted meaning such that a person of ordinary intelligence would be given fair notice of what conduct is forbidden” or, put differently, “the crucial words (or) phrases in the criminal statute have a fixed and definite meaning for a person of ordinary intelligence.” *Id.* at 417 (internal quotations omitted).

*The Conduct Purportedly Prohibited by the Trigger Bans Is Vague.*

**42.**

First, the Trigger Bans inconsistently define what conduct is illegal and thus what conduct is prohibited, making the statutory scheme void for vagueness. Among other key distinctions, as explained in paragraph 20, *supra*, the First Trigger Ban does not use the term “abortion” in explaining what conduct is prohibited. But the Second and Third Trigger Ban do use the term “abortion” to describe their prohibited conduct. Act 545 then exempts from the definition of “abortion” certain procedures, such as procedures to save the life of an unborn child, procedures to save the life of the mother, the removal of ectopic pregnancies, and the removal of an unborn child deemed to be medically futile. *Id.* § 14:87.1(1)(b)(i)–(vi).

**43.**

As such, it is unclear whether the exceptions set forth in Act 545 apply to the First Trigger Ban, even though Act 545 states that it amends the First Trigger Ban such that the terms used in La. R.S. § 40:1061 have the “same meaning as the definitions” provided in Act 545.

**44.**

To illustrate, “abortion,” as defined in Act 545, does not include the “removal of an unborn child who is deemed to be medically futile,” meaning that such procedures are not outlawed because they are not “abortion.” La. R.S. § 14:87.1(1)(b)(vi). Because the First Trigger Ban does not include the word “abortion” at all, it is unclear if this “medically futile” exception applies to the First Trigger Ban, or only to the Second and Third Trigger Bans.

**45.**

The list of exceptions to abortion for the Second and Third Trigger Bans are not clear either, as the statutes permit abortions for medically futile pregnancies but the list of what is considered “medically futile” has not yet been created. Act 545 directs LDH to “promulgate” a “list of anomalies, diseases, disorders, and other conditions which shall be deemed ‘medically futile.’” *Id.*

§ 14:87.1(19)(b). LDH has not promulgated such exceptions, meaning even if it was possible to determine whether the “medically futile” exception applies to any of the Trigger Bans, providers would not know what conditions fall under the exception.

46.

Complicating matters further, the Trigger Bans are internally inconsistent in defining whether procedures become illegal at fertilization or implantation. Act 545 states that the terms used in the First Trigger Ban have the “same meaning as the definitions” provided in Act 545 (Act 545 at 13), meaning that “unborn human being,” a term used in the prohibitory conduct of the First Trigger Ban, means “any individual of the human species from *fertilization and* implantation until birth” and “pregnant” “means that female reproductive condition of having a developing embryo or fetus in the uterus which commences at *fertilization and* implantation.” La. R.S. §§ 14:87.1(23), (27) (emphases added). The First Trigger Ban thus appears to ban abortion at the time of fertilization.

47.

The prohibitions of the Second and Third Trigger Bans, by contrast, depend on the definition of the term “abortion.” *See supra* ¶¶ 28–29. “Abortion” is defined as:

[T]he performance of any act with the intent to terminate a clinically diagnosable pregnancy with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child by one or more of the following means:

- (i) Administering, prescribing, or providing any abortion-inducing drug, potion, medicine, or any other substance, device, or means to a pregnant female.
- (ii) Using an instrument or external force on a pregnant female.

La. R.S. § 14:87.1(1)(a).

48.

A “clinically diagnosable pregnancy” is further defined as occurring after implantation:

a pregnancy that is capable of being verified by one of the following conventional medical testing methods, whether or not any testing was in fact performed by any person: (a) A blood or urine test, whether used at-home or in a medical setting, that tests for the human pregnancy hormone known as human chorionic gonadotropin (hCG) that medically indicates that *implantation* has occurred. (b) An ultrasound examination.”

*Id.* § 14:87.1(4) (emphasis added).

49.

Although this would suggest that procedures only after implantation are prohibited under the Second and Third Trigger Bans, the definition of “unborn child,” which is used in the definition of “abortion” used in the Second and Third Trigger Bans, is defined as “any individual of the human species from *fertilization and* implantation until birth.” *Id.* § 14:87.1(27) (emphasis added). And the definition of “pregnant,” like the definition of “unborn child,” “means that female reproductive condition of having a developing embryo or fetus in the uterus which commences at *fertilization and* implantation.” *Id.* § 14:87.1(23) (emphasis added). Accordingly, it is unclear whether the Second and Third Trigger Bans prohibit abortion after fertilization or implantation.

50.

The Governor, in his signing statement, attempted to reconcile these definitional conundrums, stating that SB 342 (which became Act 545), “clarif[ied]” the First Trigger Ban by establishing that “pregnancy and the life of an unborn child begin at implantation, rather than at fertilization.” Yet, the text of Act 545 does not include this language. And the Legislature’s statement of legislative intent in Act 545 appears to directly contradict the Governor’s statement: “The legislature does solemnly declare, find, and reaffirm the longstanding public policy of this state that every unborn child is a human being *from the moment of conception.*” La. R.S. § 40:1061.8(A)(1) (emphasis added). Conception, in turn, is defined as being synonymous with fertilization, *not* implantation. *Id.* § 14:87.1(5).

51.

It is thus vague as to the Second and Third Trigger Bans whether abortion is illegal at the time of fertilization or implantation, and the Second and Third Trigger Bans appear to conflict with the First Trigger Ban in this respect.

52.

Further, as explained above, each of the three Trigger Bans has separate (and conflicting) criminal penalties. The First Trigger Ban appears to provide for a maximum fine of \$1,000 and a maximum term of imprisonment of two years (La. R.S. §§ 40:1061(D), 40:1061.29); the Second Trigger Ban provides for a fine between \$10,000 and \$100,000 and term of imprisonment between one year and ten years (La. R.S. § 14:87.7(C)); and the Third Trigger Ban provides for a fine between \$20,000 and \$200,000 and a term of imprisonment between one and 15 years (La. R.S. § 14:87.7(B)).

53.

Notably, an abortion provider or others subject to prosecution under this statutory scheme cannot know whether an abortion prior to 15 weeks gestational age would be punishable by La. R.S. § 40:1061.29 or La. R.S. § 14:87.7(C)—both purport to ban abortions regardless of gestational age. And an abortion after 15 weeks could potentially be punishable by *any* of the three penalty provisions.

*The Trigger Does Not Provide Notice of Whether, When, or Which Trigger Ban is in Effect.*

54.

Unlike typical criminal statutes, the Trigger Bans do not identify a clear and unambiguous effective date. *See supra* ¶¶ 25–26. Instead, the Trigger Bans state that they will take effect upon an undefined, hypothetical future date when a set of contingencies are satisfied. Thus, to determine both *when* the Trigger Bans will take effect and *which* Trigger Ban will take effect, an ordinary citizen must determine, among other things, (1) “the extent” to which Louisiana is permitted to ban or limit abortion; (2) if that permission includes the Trigger Bans and/or one of the other more limited abortion bans in Louisiana; and (3) if so, which of the various dormant abortion laws on Louisiana’s books has taken effect. La. R.S. §§ 40:1061(A), 14:87.7(F), 14:87.8(F). It is therefore impossible for an ordinary citizen to understand what the Trigger Bans prohibit, and when, rendering them unconstitutional.

55.

The Trigger also does not provide any mechanism or process for how its efficacy should be determined, creating a vacuum which state and local officials have filled by issuing multiple contradictory statements concerning what Trigger Bans are in effect, if any. On the same day, the Attorney General tweeted twice that some unidentified version of the Trigger Bans was in effect, issued a press release hyperlinking to the unamended 2006 version of the First Trigger Ban without mention of its amendment or any effect of Act 545, and then gave a speech stating that his office was in the process of “looking through to ensure that we can enforce those particular laws,” conceding that his office had not yet determined which of the Trigger Bans were in effect. In addition, the Louisiana Department of Health declared all three Trigger Bans in effect, and the



New Orleans City Council President said *none* of the Trigger Bans were in effect. *See supra* ¶¶ 37, 39.

**56.**

In sum, the Trigger Bans both (1) fail to provide those whose conduct it potentially criminalizes, including Plaintiffs, with notice of what conduct is illegal or the extent to which it is prohibited, and what conduct is permissible with respect to abortion care; and (2) allow for arbitrary enforcement of a criminal law by unidentified law enforcement officials. Because the Trigger Bans violate both principles of the void-for-vagueness doctrine, and because there are no circumstances in which it would be constitutional, all three Trigger Bans must be enjoined both facially and as applied to Plaintiffs.

**The Trigger Bans Are Unconstitutional Because They Violate the Separation of Powers**

**57.**

The Louisiana Constitution provides that the legislative power of the State is vested solely in the Legislature, La. Const. art. III, § 1, and that, unless “otherwise provided by [the] constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.” *Id.* § 2.

**58.**

The Trigger Bans impermissibly delegate such legislative authority to determine whether abortion is criminal in Louisiana because they do not provide a mechanism or structure to determine *when and which* Trigger Bans are in effect, creating a vacuum in which state and local officials purportedly determine whether abortion is currently a criminal act in Louisiana. Such implicit delegations of authority to individuals not explicitly identified render a statute invalid.

**59.**

The Trigger Bans also violate separation of powers principles because they do not prescribe sufficient standards to guide those implicitly tasked with determining its effectiveness, leaving it to the primary and independent discretion of every Louisianan to determine whether abortion is illegal in Louisiana, without any statutory or other guidance.

**60.**

Finally, the Trigger Bans violate separation of powers because they contain no procedural safeguards to protect against abuse of discretion by the law enforcement officials implicitly charged with determining whether and which of the Bans are in effect.

## **Enforcement of the Trigger Bans Harms Plaintiffs**

### **61.**

Because Hope, Ms. Pittman, and MSFC's members perform and assist in abortion care in Louisiana, there is a real and non-speculative risk that the Trigger Bans may be criminally enforced against them if they are in effect, if Defendants are allowed to implement and/or enforce the Trigger Bans, potentially subjecting them to mandatory prison time and large fines pursuant to whichever Trigger Ban is enforced against them. Further, enforcement of the vague and unconstitutional Trigger Bans against Plaintiffs would constitute a violation of their constitutional rights to due process of law.

### **62.**

The uncertainty of whether the Trigger Bans have gone into effect and which Trigger Bans might be enforced has also caused and continues to cause Plaintiffs harm, including that the uncertainty about the Trigger Bans make it extremely difficult to operate. For instance, the uncertainty has forced long-time, dedicated Hope staff to consider quitting their jobs due to the lack of clarity and assurance that they will have a stable source of income and/or that they will not be prosecuted for working at Hope. Hope has also had trouble employing new staff, including physicians, due to the uncertainty. The uncertainty has also made it difficult for Hope to budget and plan for the future, and to determine whether it can even stay open. In addition to operational challenges, this state of affairs has caused Hope reputational harm, as well.

### **63.**

As to MSFC, the uncertainty has left its members concerned that they will face criminal penalties if they continue to provide reproductive healthcare services. They face even more difficulty being trained in techniques for abortion care and miscarriage management, as the doctors who conduct the training are uncertain of whether they can provide such training and guidance under the current state of the law; this is because there is a complete dearth of clarity regarding whether the Trigger Bans have gone into effect and the scope of conduct that is prohibited—as opposed to exempted—from criminal prosecution.

## **COUNT I**

### **INJUNCTIVE RELIEF**

**64.**

Plaintiffs adopt, reallege, and incorporate the preceding allegations of the Petition as if copied herein *in extenso*.

**65.**

Article 3601 of the Louisiana Code of Civil Procedure provides that an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the plaintiffs. La. Code Civ. P. art. 3601(A). Here, Plaintiffs are entitled to injunctive relief without the showing of irreparable injury because the conduct sought to be restrained is unconstitutional or unlawful. *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/1999); 749 So. 2d 597, 599–600.

**66.**

During the pendency of an action for an injunction, the court may issue a temporary restraining order, a preliminary injunction, or both. La. Code Civ. P. art. 3601(C).

**67.**

The Trigger Bans are void for vagueness and purport to impose criminal penalties without due process of law and are therefore unconstitutional.

**68.**

The Trigger Bans also violate non-delegation principles protected by the Louisiana Constitution and must be struck down for that separate and independent reason.

**69.**

Accordingly, Plaintiffs are entitled to injunctive relief, in the form of a temporary restraining order and then a preliminary and permanent injunction prohibiting Defendants from implementing or enforcing the Trigger Bans.

## **COUNT II**

### **DEPRIVATION OF DUE PROCESS RIGHTS UNDER ARTICLE I, SECTION 2 OF THE LOUISIANA CONSTITUTION OF 1974**

**70.**

Plaintiffs adopt, reallege, and incorporate the preceding allegations of the Petition as if copied herein *in extenso*.

71.

The Trigger Bans violate the Louisiana Constitution's guarantee that a person will not be deprived of their fundamental rights without due process of law. La. Const. art. I, § 2.

72.

The Trigger Bans are void for vagueness, and thus violate the Due Process Clause of the Louisiana Constitution.

73.

The Trigger Bans violate the Due Process Clause of the Louisiana Constitution because the conduct purportedly prohibited by the Trigger Bans is vague.

74.

The Trigger Bans do not provide notice of whether, when, or which of the Trigger Bans is in effect because they fail to identify either: (1) a clear and unambiguous effective date or (2) who, if anyone, is responsible for determining whether and which Trigger Ban is in effect. These structural defects make adequate notice as required by due process impossible.

75.

The Trigger Bans are also vague for the separate and independent reason that they lack adequate standards for enforceability. The Trigger Bans are completely silent as to which official or agency is charged with reading the United States Supreme Court's opinion and determining that they have been triggered or which one has been triggered, and in any event, the Legislature provided no guidance for making that determination.

76.

Because the Trigger Bans violate the right to Due Process, Plaintiffs are entitled to injunctive relief, in the form of a temporary restraining order and then a preliminary and permanent injunction, prohibiting Defendants from implementing or enforcing the Trigger Bans.

### **COUNT III**

#### **IMPROPER DELEGATION OF LEGISLATIVE AUTHORITY**

77.

Plaintiffs adopt, reallege, and incorporate the preceding allegations of the Petition as if copied herein *in extenso*.

**78.**

The Trigger Bans violate La. Const. art. III, § 1, which provides that legislative power of the state is vested solely in legislative branch, and that unless “otherwise provided by [the] constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.” La. Const. art. II, § 2.

**79.**

The Trigger Bans violate separation of powers principles under the Louisiana Constitution because they leave the decision as to whether they are effective, and thus whether abortion is prohibited in Louisiana, up to unidentified, individual law enforcement officers. This delegation of legislative authority is unconstitutional because the Trigger Bans do not expressly delegate the authority to any specific individual, do not prescribe sufficient standards to guide law enforcement in determining whether the Trigger Bans have gone into effect, and contain no procedural safeguards to protect against abuse of discretion.

**80.**

Because the Trigger Bans unconstitutionally delegate legislative authority, Plaintiffs are entitled to injunctive relief, in the form of a temporary restraining order and then a preliminary and permanent injunction prohibiting Defendants from implementing or enforcing the Trigger Bans.

**WHEREFORE**, Plaintiffs Hope, Ms. Pittman, and Medical Students for Choice pray that this Verified Petition be deemed good and sufficient, and after due proceedings, relief as follows:

- A. A Temporary Restraining Order and Preliminary Injunction, followed by a Permanent Injunction, enjoining the enforcement or implementation of the First, Second, and Third Trigger Bans in their entirety (La. R.S. §§ 40:1061, 14:87.7, 14:87.8);
- B. Plaintiffs’ attorney fees and costs, together with legal interest thereon calculated from date of judicial demand; and
- C. For any and all other general and equitable relief to which Plaintiffs may be entitled.

Respectfully submitted:

---

Ellie T. Schilling, 33358  
SCHONEKAS, EVANS, McGOEY  
& McEACHIN, LLC  
909 Poydras Street, Suite 1600  
New Orleans, LA 70112  
Phone: (504) 680-6050  
Fax: (504) 680-6051

E-mail: Ellie@semmlaw.com

Joanna Wright\*  
Sabina Mariella\*  
Brianna Hills\*  
Lindsey Ruff\*  
BOIES SCHILLER FLEXNER LLP  
55 Hudson Yards  
New York, New York 10001  
Phone: 212-446-2359  
Email: jwright@bsflp.com

Jenny Ma\*  
CENTER FOR REPRODUCTIVE RIGHTS  
199 Water Street, 22nd Floor  
New York, New York 10038  
Phone: (917) 637-3600  
Fax: (917) 637-3666  
Email: jma@reprorights.org

*Attorneys for June Medical Services, LLC;  
Kathaleen Pittman; and Medical Students for Choice*

\* Motions for Admission *Pro Hac Vice* Forthcoming

**PLEASE SERVE:**

Louisiana Attorney General  
Honorable Jeff Landry  
1885 North 3<sup>rd</sup> Street  
Baton Rouge, Louisiana 70802

Courtney N. Phillips  
Secretary of Louisiana Department of Health  
628 North 4<sup>th</sup> Street  
Baton Rouge, Louisiana 70802