No. 16-30116

In the United States Court of Appeals for the Fifth Circuit

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 – Appellees

v.

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

Defendant – Appellant

On Appeal from the U.S. District Court, Middle District of Louisiana
No. 14-cv-525-JWD

APPENDIX TO APPELLANT'S EMERGENCY STAY MOTION

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District Court's Judgment (Feb. 10, 2016)

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.

CIVIL ACTION

VERSUS

NO. 14-CV-00525-JWD-RLB

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

JUDGMENT

For the reasons stated in this Court's Findings of Fact and Conclusions of Law, (Doc. 216), and consistent with the Joint Stipulation and [Proposed] Order Regarding the Court's January 26, 2016 Findings of Fact and Conclusions of Law, (Doc. 224), and Joint Motion to Dismiss Mark Dawson, in His Official Capacity as President of the Louisiana State Board of Medical Examiners, (Doc. 110),

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Kathy H. Kliebert and her successors, as well as any and all employees, agents, entities, or other persons acting in concert with her, are preliminarily enjoined from enforcing LA. R.S. § 40:1299.35.2 *et seq.* against the following persons: Doctor John Doe 1; Doctor John Doe 2; June Medical Services, LLC, d/b/a Hope

Medical Group for Women, and its physicians and staff; Bossier City Medical Suite, as well as its physicians and staff; Choice, Inc. of Texas, d/b/a Causeway Medical Clinic, and its physicians and staff, including Doctor John Doe 4; and any and all others encompassed by the Parties' stipulations. This injunction will remain in effect until further notice from this Court or the United States Court of Appeals for the Fifth Circuit.

Signed in Baton Rouge, Louisiana, on February 10, 2016.

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

Tab B

District Court's Findings of Fact and Conclusions of Law (Jan. 26, 2016)

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.

CIVIL ACTION

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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OVERVIEW

I. Introduction

Before the Court is Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction ("Application"), filed by five persons: June Medical Services LLC, d/b/a Hope Medical Group for Women ("Hope" or "Hope Clinic); Bossier City Medical Suite ("Bossier" or "Bossier Clinic"); Choice Inc., of Texas, d/b/a Causeway Medical Clinic ("Choice" or "Causeway") (collectively, "Plaintiff Clinics"); including two natural persons, Doctor Doe 1 ("Doe 1")[1] and Doctor Doe 2 ("Doe 2") (collectively, "Plaintiff Doctors") (collectively, "Plaintiffs"). (Doc. 5.) The Application sought to bar enforcement of Section A(2)(a) of Act Number 620 ("Act" or "Act 620"),[2] amending Louisiana Revised Statutes § 40:1299.35.2.[3] Although Plaintiffs sought a temporary restraining order and a preliminary injunction in this single document, this Court issued the requested temporary order on August 31, 2014, and deferred ruling on their conjoined motion for a preliminary injunction ("TRO"), (Doc. 31 at 1–2), a distinction subsequently clarified by this Court's later order, (Docs. 57, 84). This Ruling and

[1] The identities of the Plaintiff Doctors as well as the other Louisiana abortion physicians who are not parties–Doctors Doe 3, 4, 5, and 6 (individually, "Doe 3," "Doe 4," "Doe 5," "Doe 6")–are protected by virtue of two protective orders. (Docs. 24, 55.) Rather than repeating the formulation "Dr. Doe []," this Court opts for the simpler "Doe []" and, only occasionally, "Dr. Doe []."

[2] A copy of the final bill appears as a joint exhibit, (JX 115), and in other filings, (*See, e.g.*, Doc. 168-10 at 39–43). As the statute was subsequently codified, and as a statute's language need not be evidenced to be known, this Court will cite to Act 620 as codified. *See infra* note 3. The Court does so throughout this opinion unless it is recounting, as it later does, *see infra* Part VI, Act 620's pre-enactment's history.

[3] In this Ruling, any and all references to "Section []" or "§ []" are to Act 620 as codified in Louisiana Revised Statutes. Act 620 also amended Sections 1299.35.2.1 and 2175.3(2) and (5). *See infra* Part VI.

Order ("Ruling") now addresses this latter request ("Motion for Preliminary Injunction"). Also before the Court is Defendant's Motion to Reconsider Rulings on Summary Judgment and Motion *in Limine* ("Motion for Reconsideration"), (Doc. 144), filed by Ms. Kathy Kliebert ("Defendant," "Kliebert," "Secretary," or "Secretary Kliebert"), who is being sued by Plaintiffs in her official capacity as then Secretary of Department of Health and Hospitals of the State of Louisiana ("DHH").[4]

The hearing on the Motion for Preliminary Injunction was held from June 22, 2015, through June 29, 2015. (Docs. 163–64, 166, 169, 174.) At the hearing, the Court received evidence in the form of live witness testimony, exhibits, stipulations, and designated deposition testimony agreed by Plaintiffs and Defendant (collectively, "Parties") to be received in lieu of certain witness' live testimony. Plaintiffs presented live testimony from the following witnesses:

- Doe 1;
- Doe 2;
- Doe 3;
- Ms. Kathaleen Pittman ("Pittman"), June's administrator; and
- Kliebert; and
- Three experts, specifically:
    - Doctor Christopher M. Estes ("Estes"), Chief Medical Officer of Planned Parenthood of South Florida and the Treasure Coast, (PX 92);

[4] As permitted by precedent, *Ex parte Young*, 209 U.S. 123, 152, 28 S. Ct. 441, 451, 52 L. Ed. 714 (1908); *accord Guillemard-Ginorio v. Contreras-Gomez*, 585 F.3d 508, 530 n.24 (1st Cir. 2009), Plaintiffs sue for injunctive relief against Kliebert in her official capacity, (Doc. 1 at 5). To wit, the true defendant here is Louisiana, not Kliebert or even DHH. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989).

- Doctor Sheila Katz ("Katz"), an assistant professor at the University of Houston, (JX 91); and
- Doctor Eva Karen Pressman ("Pressman"), the Henry A. Thiede Professor and Chair of The Department of Obstetrics and Gynecology at The University of Rochester, (PX 94).

Defendant presented live testimony at trial from the following witnesses:

- Ms. Cecile Castello ("Castello"), Director of Health Standards Section ("HSS") for DHH; and
- Three other experts, specifically:
  - Doctor Robert Marier ("Marier"), Chairman of the Department of Hospital Medicine at Ochsner Medical Center in New Orleans, (DX 146);
  - Doctor Tumulesh Kumar Singh Solanky ("Solanky"), a professor and the chair of the Mathematics Department at the University of New Orleans, (DX 148); and
  - Doctor Damon Thomas Cudihy ("Cudihy"), an obstetrician-gynaecologist ("OB/GYN," "Ob/Gyn," "OBG," or "O&G") currently licensed to practice medicine in Louisiana and Texas, (DX 147).

A record of the exhibits admitted into evidence was filed. (Doc. 165.) A record of the deposition testimony designated by the Parties and offered into evidence was also docketed. (Doc. 168.[5]) In

[5] Cochran's deposition appears in Document 168-4, Doe 4's in Document 168-5, Doe 5's in Document 168-6, Ms. Hedra Dubea's in Document 168-7, Mr. Robert Gross' in Document 168-8, Ms. Dora Kane's in Document 168-9, Doctor Cecilia Mouton's in Document 168-10, and Ms. Jennifer Christine Stevens in Document 168-11.

addition, the Parties submitted proposed findings of fact and conclusions of law, (Docs. 196, 200), and responses to each other's proposed findings and conclusions, (Docs. 201, 202).

In making the following findings of fact and conclusions of law, the Court has considered the record as a whole. The Court has observed the demeanor of witnesses and has carefully weighed their testimony and credibility in determining the facts of this case and drawing conclusions from those facts. All findings of fact contained herein that are more appropriately considered conclusions of law are to be so deemed.[6] Likewise, any conclusions of law more appropriately considered a finding of fact shall be so classified.[7]

After having considered the evidence, briefing, and record as a whole, for the reasons which follow, Defendant's Motion for Reconsideration, (Doc. 144), is DENIED. The active admitting privileges requirement of Section A(2)(a) of Act 620 is found to be a violation of the substantive due process right of Louisiana women to obtain an abortion, a right guaranteed by the Fourteenth Amendment of the United States Constitution as established in *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) ("*Roe*"), and pursuant to the test first set forth in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992) ("*Casey*"), and subsequently refined by the Fifth Circuit, *see infra* Part XI. Act 620 is therefore declared unconstitutional, its enforcement constitutionally barred. As such, the Motion for Preliminary Injunction is GRANTED IN PART, and any enforcement of § 40:1299.35.2 is enjoined as to Does 1 and 2, Hope, Bossier, and Causeway.

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[6] For an example of such an approach, see Doc. 14021, No. 2:10-md-02179-CJB-SS (E.D. La. Jan. 15, 2015).

[7] *Id.*

Furthermore, because applications for "active admitting privileges"[8] by several doctors technically remain "pending," the Court orders Plaintiffs to provide to the Court and Defendant with a written notification of any changes in the status of these applications on a monthly basis, beginning on March 1, 2016. Should the status of any application change, the Parties are free to request any other relief that they may deem appropriate. Finally, so as to discuss any outstanding issues and schedule this case's course, the Court will hold a telephonic status conference with counsel for all Parties on January 29, 2016, at 11:30 a.m.

FINDINGS OF FACT

II. Background and Procedural History

1. Plaintiffs are:

- Hope, a licensed abortion clinic located in Shreveport, Louisiana, suing on behalf of its physicians, staff and patients;
- Bossier, a licensed abortion clinic located in Bossier City, Louisiana, suing on behalf of its physicians, staff, and patients;
- Choice, a licensed abortion clinic suing on behalf of its physicians, staff, and patients;
- Doe 1, a physician licensed to practice medicine in the State of Louisiana and board-certified in Family Medicine and Addiction Medicine, suing on his own behalf and that of his patients; and
- Doe 2, a physician licensed to practice medicine in the State of Louisiana and

[8] For a definition of this term, see *infra* Part V.D.

board-certified in OB/GYN, suing on his own behalf and that of his patients.

2. Kliebert, the Secretary of DHH.[9] Pursuant to § 40:2175.6, Kliebert "has the authority to revoke or deny clinics' licenses for violation of this or any other law."(Doc. 109 at 5 (citing LA. R.S. § 40:2175.6).)[10]

3. On August 22, 2014, Plaintiffs filed the Complaint for Declaratory and Injunctive Relief, (Doc. 1), and the Application, (Doc. 5), seeking to enjoin various defendants from enforcing Act 620's Section (A)(2)(a). (Doc. 5-2 at 2–5.)

4. Act 620 has been codified at an amended Section 40:1299.35.2. LA. R.S. § 40:1299.35.2. Section A(2)(a) requires every doctor who performs abortions in Louisiana to have "active admitting privileges" at a hospital within 30 miles of the facility where abortions are performed. *Id.* § 40:1299.35.2A(2)(a). While the Act contains other requirements, this provision is the only one being challenged. (Doc 5-1 at 8 n.1.) Act 620 was signed into law by the Governor

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[9] In the original Complaint, Plaintiffs sued Mr. James David Caldwell ("Caldwell") in his official capacity as Louisiana's Attorney General and Doctor Jimmy Guidry ("Guidry") in his official capacity as the State Health Officer of Louisiana and Medical Director of DHH. (Doc. 1 at 1.) The Court dismissed both Caldwell and Guidry. (Doc. 31.) Kliebert was added as a defendant in an Amended Complaint for Declaratory and Injunctive Relief. (Doc. 14.) Doctor Mark Henry Dawson, President of the Louisiana State Board of Medical Examiners ("Board"), was sued because Act 620 purports to make the Board an enforcement arm of the Act. LA. R.S. § 40:1299.35.2.1(E). In addition, the Board has the authority to take disciplinary action against any physician, LA. R.S. § 37:1263 *et seq.* (Doc. 109 at 6.) However, Dawson was subsequently dismissed at the Parties' joint request. (Docs. 110, 111.) As a part of the joint motion, the Board agreed to be bound by any injunction issued by the Court regarding Act 620. (Doc. 110 ¶ 1(b) at 1.)

[10] In accordance with *The Bluebook: A Uniform System of Citation*, the documents filed in this case's docket, but not later submitted as exhibits at the June hearing, will be cited by document number alone, e.g. Doc. 109. Conversely, the evidence introduced by the Parties, either individually or jointly, as exhibits will be identified by their precise exhibit number even if later filed as a document on this case's docket, *see* Doc. 196. For example, joint exhibit 10 will be cited as "JX 10," Defendant's exhibit five as "DX 5," and Plaintiffs' exhibit six as "PX 6."

of Louisiana, the Honorable Piyush "Bobby" Jindal ("Jindal" or "Governor"), on June 12, 2014. (Doc. 138 at 2; *see also, e.g.*, H.B. 388, 2014 Leg., Reg. Sess. (La. 2014) (signed by Governor, June 12, 2014).) Its effective date was set as September 1, 2014. (*See, e.g.*, Doc. 5-1 at 8; Doc. 5-2 at 6.)

5. Hope, Bossier, and Choice are three of five licensed abortion clinics in Louisiana. (*See, e.g.*, Doc. 109 at 4–5; Doc. 14 ¶ 10 at 3.) They are located in Shreveport, Bossier City, and Metairie, respectively. (Doc. 109 at 4–5; *see also, e.g.*, Doc. 14 ¶¶ 11–13 at 3–4.) Does 1 and 2 are two of six physicians performing abortions in Louisiana. (Doc. 109 at 5; *see also, e.g.*, Doc. 14 ¶¶ 14–15 at 4.) Doe 1 performs abortions at Hope; Doe 2 performs abortions at Bossier and Choice. (Doc. 109 at 5; *see also, e.g.*, Doc. 14 ¶¶ 14–15 at 4.)

6. The Court issued the TRO on August 31, 2014, enjoining enforcement of Act 620 "until a hearing is held for the purpose of determining whether a preliminary injunction should issue." (Doc. 31 at 18.) Per this order, Plaintiffs were expected to continue seeking admitting privileges at the relevant hospitals. (*Id.* at 1–2.) Thus, the Act would be allowed to take effect, but the Plaintiffs would not be subject to its penalties and sanctions for practicing without the relevant admitting privileges during the application process. (*Id.* at 2, 18.) The Plaintiff Clinics were allowed to operate lawfully while the Plaintiff Doctors continued their efforts to obtain privileges. (*Id.*)

7. On September 19, 2014, three other plaintiffs–Women's Health Care Center, Inc. ("Women's Health" or "Women's Clinic"); Delta Clinic of Baton Rouge, Inc. ("Delta"); Doctor John Doe 5 ("Doe 5"); and Doctor John Doe 6 ("Doe 6") (collectively, "Women's Health Plaintiffs")–filed the Complaint for Declaratory and Injunctive Relief, thereby initiating a

separate case, and a Motion for Preliminary Injunction. (Docs. 1, 5, No. 3:14-cv-00597-JWD-RLB.) On that same day, these parties tendered a motion to consolidate their case with this earlier proceeding. (Doc. 2, No. 3:14-cv-00597-JWD-RLB.) By this Court's order, these two cases were consolidated on September 24, 2014. (Doc. 8, No. 3:14-cv-00597-JWD-RLB.)

8. All the Parties agreed in briefs and orally at a status conference held on September 30, 2014, that significant discovery would need to be done to prepare for the hearing; therefore, the Court set the preliminary injunction hearing for March 30, 2015. (Doc. 45.) A Joint Proposed Scheduling Order was submitted by the Parties on October 8, 2014, (Doc. 49), and adopted as this Court's order on October 21, 2014, (Doc. 56).

9. On November 3, 2014, following the addition of the Women's Health Plaintiffs, this Court issued the Order Clarifying Temporary Restraining Order of August 31, 2014. (Doc. 57.) For the reasons given therein, the Court ruled: "It was and is the intention of this Court that the TRO remain in effect as to all parties before it until the end of the Preliminary Injunction Hearing." (*Id.* at 6.)

10. On December 5, 2014, the Women's Health Plaintiffs filed the Motion for Voluntary Dismissal. (Doc. 70.) With the consent of the Parties, the Court dismissed this suit without prejudice on December 14, 2014. (Doc. 77.) In light of that dismissal, the Court on January 15, 2015, issued the Second Order Clarifying Temporary Restraining Order of August 31, 2014. (Doc. 84.) In this order, for reasons explained therein, this Court ruled that "the TRO of August 31, 2014 (Doc. 31) remains in force until the Preliminary Injunction hearing on March 30, 2015 or as otherwise modified by this Court." (*Id.* at 4.)

11. On February 16, 2015, Defendants filed the Motion for Partial Summary

Judgment ("Partial MSJ"), (Doc. 87), which was opposed, (Doc. 104). On February 24, 2015, Defendants filed an Unopposed Motion to Set Oral Argument on Motion for Partial Summary Judgment (Doc. 90.) On March 3, 2015, the Court granted that motion, (Doc. 92), and oral argument was set and heard on March 19, 2015, (Docs. 128, 137).

12. On May 12, 2015, the Partial MSJ was granted in part, finding that under binding Fifth Circuit jurisprudence, the admitting privileges requirement of Act 620 is rationally related to a legitimate State interest. (Doc. 138 at 125.) In all other respects, the motion was denied. (*Id.*)

13. Based on a stipulation reached among the Parties, the Joint Motion to Dismiss Defendant Mark Dawson was filed on March 17, 2015, (Doc. 110), and granted the same day, (Doc. 111). On March 20, 2015, the Parties conferred with the Court and agreed to a continuance of the hearing on the preliminary injunction until the week of June 22, 2015. (Doc. 129.) The Parties agreed that the TRO would remain in effect until the completion of the trial and ruling on the merits of the preliminary injunction. (*Id.*)

14. On April 1, 2015, oral argument was heard on motions in limine filed by the Parties. (Docs. 136, 151.) In the ruling issued that same day, the Court denied Plaintiffs' Motion in Limine to Preclude Expert Testimony of Dr. Tumulesh Solanky, (Doc. 96), and Defendant's Motion to Exclude Expert Testimony of Sheila Katz, Ph.D., (Doc. 99). (Doc. 136.) Plaintiffs' Motion in Limine to Preclude Expert Testimony of Dr. McMillan, (Doc. 97), was denied as moot. (Doc. 136.) Because of their connection to the Partial MSJ, Defendant's Motion in Limine to Exclude Irrelevant Evidence ("Defendant's Motion in Limine"), (Doc. 95), and Plaintiffs' Motion in Limine to Preclude Evidence of DHH Deficiency Reports and Related Evidence, (Doc. 98), were taken under advisement. (Doc. 136.) These two motions were ultimately denied. (Docs. 139,

140.)

15. On June 11, 2015, Defendant filed the Motion to Reconsider Rulings on Summary Judgment and Motion in Limine. (Doc. 144.) Plaintiffs submitted their response in opposition on June 16, 2015. (Doc. 150.) Because this was submitted for consideration only six days before trial, the motion was taken under advisement and deferred to trial.

16. Trial on the Motion for Preliminary Injunction began on June 22, 2015, and ended on June 29, 2015. (Docs. 163, 164, 166–69, 174). The Redacted Transcript[11] of the trial was later docketed.[12] (Docs. 190–95.)

III. Contentions of the Parties

17. In broad terms,[13] Plaintiffs contend that Act 620 is facially[14] unconstitutional first, because the Act places an undue burden on the right of Louisiana women seeking an abortion by

[11] The unredacted transcript was sealed on the joint motion of the Parties. (Doc. 183.)

[12] Each of the six volumes of testimony corresponds to the trial day in which the evidence was received: Document 190 is Volume I, June 22; Document 191 is Volume II, June 23; Document 192 is Volume III, June 24; Document 193 is Volume IV, June 25; Document 194 is Volume V, June 26; and Document 195 are Volume VI, June 29. Document 190 (or Volume I) contains the testimony of Pittman, Doe 3, and Estes; Document 191 (or Volume II), that of Doe 2, Katz, and Kliebert; Document 192 (or Volume III), that of Doe 1 and Castello; Document 193 (or Volume IV), that of Marier and Solanky; Document 194 (or Volume V), that of Cudihy; Document 195 (or volume VI), that of Pressman.

[13] The Parties' specific contentions underlying these broad positions are discussed in connection with the individual issues to which they are relevant.

[14] Plaintiffs state emphatically that they are not making an "as-applied" challenge and that their only challenge is facial. (Doc. 202 at 53.)

placing substantial obstacles in their path, (*See, e.g.*, Doc. 202 at 46–53);[15] second, because the purpose of the Act is to create those obstacles, (*See, e.g.*, *id.* at 53–58) and third, because Act 620 does not further a valid state interest, (*See, e.g.*, *id.* at 58–65).

18. Plaintiffs argue that a preliminary injunction should issue enjoining the enforcement of Act 620 because Plaintiffs are likely to succeed at trial, (Doc. 196 at 67–85); absent an injunction, irreparable harm will occur, (*Id.* at 85–86); the balance of hardships weighs in Plaintiffs' favor, (*Id.* at 86–87); and finally, granting the preliminary injunction will not adversely affect the public interest, (*Id.*).

19. Defendant counters broadly that Act 620 places no substantial burden on a woman's right to seek an abortion in Louisiana, (*See, e.g.*, Doc. 200 at 59–66), and that the Act serves a valid purpose, (*See, e.g.*, *id.* at 66–74). Further, Defendant argues that this Court has already ruled that Act 620 serves a valid state interest and has a rational basis. (*See, e.g.*, *id.* at 6–7.)

20. Defendant argues that Plaintiffs have failed to carry their burden that they are likely to succeed at trial and further, urge that no irreparable harm will occur by allowing the enforcement of Act 620. (*See, e.g.*, *id.* at 88–90.)

21. Finally, Defendant contends that the balance of hardships weighs in her favor and that the enforcement of Act 620 will not adversely affect the public interest. (*Id.*)

[15] Page references to the Parties' briefs and other docketed documents are to the docketed document's page number and not its internal pagination. In contrast, for exhibits, this Court will employ their internal page number so as to permit a reader to more easily and quickly locate the relevant data.

IV. The Factual Issues

22. Four main issues of fact were tried at the June hearing:

(A) What is the purpose of Act 620?

(B) Is Act 620 medically necessary and reasonable?

(C) How, if at all, will the implementation of Act 620 affect the physicians and clinics who perform abortions in the state of Louisiana?

(D) How, if at all, will the implementation of Act 620 affect the ability of Louisiana women to obtain an abortion?

23. Whether these factual issues and their resolution are relevant under the applicable legal standard, and whether they play a role in this Court's ruling, is discussed in the Conclusions of Law section. *See infra* Parts XI–XII.

V. Abortion in Louisiana

A. Generally

24. According to DHH, approximately 10,000 women obtain abortions in Louisiana annually. (DX 148 ¶ 11.)

25. Nationally, approximately 42% of women who have abortions fall below the federal poverty level, and another 27% fall below 200% of that level. (JX 124 at 480; Doc. 191 at 190–91.)[16] That number is likely significantly higher for Louisiana women seeking abortions. (*Id.*) The expert and lay testimony on this issue are consistent. (*See, e.g.*, Doc. 190 at 34

[16] The Court accepted Katz as an expert in the sociology of gender and the sociology of poverty. (Doc. 191 at 123–26.) The Court found Katz well qualified and credible.

(Testimony of Pittman) (testifying that 70% to 90% of patients at Hope are below the federal poverty level).)

26. Under Louisiana law, a patient must receive state-mandated counseling and an ultrasound at least 24 hours before an abortion. (JX 109 ¶ 18; JX 116 ¶ 11; JX 117 ¶ 8.)

27. Due to this notification and waiting period, patients who wish to obtain an abortion must make two trips to the clinic: the first to receive the ultrasound and state-mandated counseling, and the second to obtain the sought abortion. (JX 109 ¶ 19.)

B. The Clinics

28. There are currently five women's reproductive health clinics in Louisiana that provide abortion services. (*E.g.*, Doc. 109 at 4; JX 109 ¶ 13.)

(1) Hope

29. Hope is a women's reproductive health clinic located in Shreveport, Louisiana, that has been operating since 1980 and offers abortion services. (Doc. 109 at 4; *see also* Doc. 14 ¶ 11 at 5.) Hope is a licensed abortion clinic suing on its own behalf and on behalf of its physicians, staff and patients. (Doc. 14 ¶ 11 at 5; Doc. 190 at 14.)

30. Hope provides medication abortions through eight weeks and surgical abortions through 16 weeks, six days LMP.[17] (Doc. 190 at 35, 119, 132.) Hope employs two doctors who perform abortions, Does 1 and 3. (*Id.* at 21.) Doe 1 performs approximately 71% of the abortions

[17] Throughout this opinion, the Court will define the length of pregnancy based on the time elapsed since the first day of a woman's last menstrual period, or LMP.

provided by Hope, and Doe 3 performs the remaining 29%. (Doc. 190 at 21; JX 116 ¶ 5.)

31. 69% of Hope's patients are Louisiana residents, but the remainder travel from outside the state to Hope. (JX, 116 ¶ 10; Doc. 190 at 19, 34.)

(2) Bossier

32. Bossier is a women's reproductive health clinic that has been operating in Bossier City since 1980 and provides first and second trimester abortions. (Doc. 109 at 4; Doc. 14 ¶ 12.) Bossier is a licensed abortion clinic and a plaintiff suing on its own behalf and on behalf of its physicians, staff, and patients. (Doc. 14 ¶ 12.)

33. Bossier provides medication abortions through eight weeks and surgical abortions through the state's legal limit of 21 weeks, six days LMP. (Doc. 191 at 22–23, 55–56; JX 117 ¶ 4.)

34. Bossier employs one doctor, Doe 2, who performs first and second trimester surgical procedures as well as medication abortions. (Doc. 191 at 21; JX 117 ¶ 5.) Doe 2 is the only doctor in Louisiana who performs abortions after 16 weeks, six days LMP. (JX 187 ¶ 4; Doc. 191 at 21–22.)[18]

35. Bossier's patients are primarily from Louisiana, but also travel to the clinic from surrounding states. (Doc. 191 at 20.)

[18] There is testimony that Doe 5 has also performed abortions up to 18 weeks although it is unclear whether he is referring to the present or what he has done in the past. (Doc. 168-6 at 7–8.) The resolution of this issue is not critical to the Court's ruling.

(3) Causeway

36. Causeway is a women's reproductive health clinic located in Metairie, Louisiana, and has provided abortion and reproductive health services since 1999. (Doc. 109 at 2–5; Doc. 14 ¶ 13.) Causeway is a licensed abortion clinic suing on its own behalf and that of its physicians, staff, and patients. (Doc. 14 ¶ 14).

37. Causeway offers surgical abortions through 21 weeks, six days LMP, and does not offer medication abortions. (JX 117 ¶ 4.)

38. Causeway employs two doctors who perform abortions, Does 2 and 4. (*See, e.g.*, Doc. 168-5 at 8.) Doe 2 performs approximately 25% of the abortions provided at Causeway, and Doe 4 performs the remaining 75%. (JX 117 ¶ 5.)

(4) Women's Health

39. Women's Health is a women's reproductive health care clinic located in New Orleans, Louisiana, and has provided abortion and women's reproductive health services since 2001. (Doc. 109 at 5; JX 168 ¶ 1; JX 110 ¶ 1.)

40. Women's Health employs two doctors who perform abortions, Does 5 and 6. (JX 110 ¶ 3; JX 168 ¶ 4.) Doe 5 performs approximately 40% of the abortions provided at Women's Clinic, and Doe 6 performs the remaining 60%. (JX 110 ¶ 3; JX 168 ¶ 4.)

41. Women's Health provides surgical abortions for women through 16 weeks and medication abortions through eight weeks. (Doc. 168-4 at 19.[19]) Doe 6 provides only medication

[19] The designated deposition testimony appears within the larger docketed document. (Doc. 168.) For the sake of consistency and ease, the Court continues to use the page numbers of the uploaded document and not of the deposition transcript itself.

abortions. (*Id.* at 55.)[20]

(5) Delta

42. Delta is a women's reproductive health care clinic located in Baton Rouge, and has provided abortion and women's reproductive health services since 2001. (Doc. 109 at 5.)

43. Delta employs one doctor who performs abortions, Doe 5. (JX 110 ¶ 35.)

44. Delta provides surgical abortions for women through 16 weeks LMP, and medication abortions through eight weeks. (Doc. 168-4 at 13–14, 19.)[21]

45. The northern part of Louisiana is served by Hope in Shreveport and by Bossier Clinic in Bossier City. (Doc. 191 at 17; Doc. 190 at 110.) The southern part of this state is served by Causeway in Metairie, Delta in Baton Rouge, and Women's Health in New Orleans. (JX 110 ¶ 1; JX 114 ¶ 1; JX 109 ¶ 13.)

C. The Doctors

46. There are currently six doctors who perform all abortions in Louisiana. (Doc. 109 at 4; *see also, e.g.*, JX 109 ¶ 14.)

(1) Doe 1

47. Doe 1 is a board-certified physician in Family Medicine and Addiction Medicine and is one of two clinic physicians at Hope. (Doc. 109 at 5).

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[20] *See* supra note 18.

[21] *Id.*

48. Doe 1 has over 10 years of experience, seven of those as an abortion provider. (Doc. 190 at 139–40; Doc. 14 ¶ 14.) He provides medication abortions through eight weeks and surgical abortions through 13 weeks, six days LMP. (Doc. 192 at 21; Doc. 190 at 132.)

49. Doe 1 was trained to provide abortion services by Doe 3**,** the medical director of the Hope Clinic, where they both work. (Doc. 192 at 140–41.)

50. Despite beginning his efforts to get admitting privileges at a nearby hospital in July 2014, (*Id.* at 52), Doe 1 still does not have active admitting privileges at a hospital within 30 miles of Hope Clinic. (Doc. 190 at 21.) The efforts of all six doctors to gain active admitting privileges and the results of those efforts are reviewed in more detail in another section of this Ruling. *See infra* Part VIII.

(2) Doe 2

51. Doe 2 is a board-certified obstetrician-gynecologist and is one of two clinic physicians at Causeway and the only clinic physician at Bossier who provides abortion services. (Doc. 109 at 5.) He is the medical director of Causeway and Bossier. (*Id.*)

52. Doe 2 has been performing abortions since 1980. (Doc. 191 at 13-14.) Doe 2 performs medication abortions through eight weeks and surgical abortions up through the state's legal limit of 21 weeks, six days LMP. (Doc. 191 at 22–23, 55–56; JX 187 ¶ 4.) He performs medication and surgical abortions at Bossier Clinic, but only surgical abortions at Causeway Clinic. (*Id.* at 21–23.) Last year, Doe 2 performed approximately 550 abortions at Bossier and 450 abortions at Causeway Clinic. (*Id.* at 17–18.)

53. Doe 2 performs first and second trimester surgical abortions through 21 weeks, six

days LMP, and is the only one of two physicians in Louisiana to offer abortion after 16 weeks, six days LMP. (*Id.* at 21–22.)[22]

54. Doe 2 has been unsuccessful in getting active admitting privileges within 30 miles of Bossier and has been able to obtain only limited privileges, which do not meet the requirements of Act 620, within 30 miles of Causeway. (*See, e.g.*, *id.*)

(3) Doe 3

55. Doe 3 is a board-certified obstetrician-gynecologist and one of two clinic physicians at Hope. (Doc. 109 at 5.) He is also the medical director at Hope. (*Id.*)

56. Doe 3 has been licensed to practice medicine in Louisiana since 1976. (Doc. 190 at 109.) In addition to his abortion practice, he has an active general OB/GYN practice, where he delivers babies and routinely performs gynecological surgery including hysterectomies, laparoscopies, and dilation and curettages ("D&Cs"). (*Id.* at 110.)

57. Doe 3 is the chief medical officer of Hope Clinic, where he has worked since 1981. (Doc. 190 at 108, 117, 21.) He provides medication abortions through eight weeks and surgical abortions through 16 weeks, six days LMP. (*Id.* at 35, 119, 132.)

58. Doe 3 performs abortions at Hope Clinic on Thursday afternoons and all day on Saturday. He sees approximately 20 to 30 abortion patients a week. (*Id.* at 117–18, 153.) On occasion, he will cover for Doe 1 and will see more patients in those instances. (*Id.*)

59. Doe 3 currently has admitting privileges at Willis-Knighton Hospital in Bossier ("WKB") and at Christus Highland Medical Center in Bossier ("Christus"), both of which are

[22] *Id.*

within 30 miles of Hope Clinic. (*Id.* at 21–22, 120, 148–49.) Doe 3's current privileges at Christus require him to admit approximately 50 patients per year. (*Id.* at 150–52; JX 59.)

60. Doe 3 has his current admitting privileges because he regularly admits patients to the hospital as part of his private OB/GYN practice, not because of his work at Hope Clinic. (*Id.* at 124, 147.)

(4) Doe 4

61. Doe 4 is a board-certified obstetrician-gynecologist and one of two clinic physicians at Causeway. (Doc. 109 at 5.)

62. Doe 4 obtained his license to practice medicine in Maryland in 1959 and has been practicing medicine for 56 years and in Louisiana since 1965. (Doc. 168-5 at 5–6.) He served as an assistant professor or assistant instructor in obstetrics and gynecology for seventeen years at Earl K. Long Hospital. (*Id.* at 12.)

63. When Doe 4 maintained a full OB/GYN practice, he had admitting privileges at four hospitals in the Baton Rouge area. (*Id.* at 6.) He was required to have admitting privileges to do OB/GYN surgery and, in his words, "to deliver babies." (*Id.*) The existence of these privileges did not benefit his pregnancy termination patients because, to his knowledge, none of his abortion patients experienced any problem and required hospital admission. (*Id.* at 19–20.)

64. Doe 4 performs abortions at Causeway in Metairie. (Doc. 109 at 5; *see also, e.g.*, Doc. 168-5 at 8.) He does not currently have and has been unable to get admitting privileges at a hospital within 30 miles of Causeway. (Doc. 191 at 18; *see also, e.g.*, Doc. 168-5 at 16.)

(5) Doe 5

65. Doe 5 is a board certified obstetrician-gynecologist. (Doc. 109 at 5; *see also* Doc. 168-6 at 4–5.) He is one of two clinic physicians at Women's Clinic and the only clinic physician at Delta Clinic. (Doc. 109 at 5; *see also* Doc. 168-6 at 4, 13–14, 22.)

66. Doe 5 has been licensed to practice medicine in Louisiana since 2005. (Doc. 168-6 at 5.) He provides surgical abortions at Delta Clinic and Women's Health through 16 weeks LMP. (*Id.* at 20; *see also* JX 110 ¶ 1.)[23]

67. Doe 5 has been successful in getting active admitting privileges within 30 miles of Women's Health in New Orleans but has been unsuccessful in his efforts to get active admitting privileges within 30 miles of Delta in Baton Rouge. (Doc. 168-6 at 11–13; *see also, e.g.*, JX 109 ¶¶ 33–34; JX 110 ¶¶ 15–19.)

(6) Doe 6

68. Doe 6 is a board certified obstetrician-gynecologist and one of two clinic physicians at Women's Health. (Doc. 109 at 5; *see also* Doc. 168-4 at 13.)

69. Doe 6 has been practicing medicine for 48 years. (JX 109 ¶ 8.) He is currently the medical director of Women's Clinic and Delta Clinic. (*Id.*) Dr. John Doe 6 provides only medication abortions and does so only at Women's Clinic. (*Id.* ¶¶ 8–9.)

70. Doe 6 has been unsuccessful in his efforts to get active admitting privileges within 30 miles of Women's. (*Id.* ¶¶ 23–26.)

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[23] *Id.*

D. Admitting Privileges in Louisiana

71. In order to perform abortions legally in Louisiana, Act 620 requires an abortion doctor to have "active admitting privileges" at a hospital within 30 miles of the facility where he or she performs abortions. LA. R.S. § 40:1299.35.2A(2)(A). To have "active admitting privileges" the physician must be a "member in good standing of the medical staff" of a hospital "with the ability to admit a patient and to provide diagnostic and surgical services to such patient . . . ." *Id.* The phrase "member in good standing of the medical staff" is not separately defined. (*Cf.* Doc. 193 at 12.)

72. Thus, how a physician may obtain "medical staff" and "active admitting" privileges from a Louisiana hospital is critical in determining the effect, if any, that Act 620 has on abortion providers and, in turn, the women that they serve.

73. The expert testimony regarding hospital admitting privileges came primarily from two experts–Pressman, Plaintiffs' expert, (Doc. 195 at 11–96), and Marier, Defendant's (Doc. 193 at 4–124)–and, to a lesser extent, from the other physicians, including Does 1, 2, 3, 4, 5, and 6, who testified. *See supra* Part I. On the issue of admitting privileges and hospital credentialing, the Court found both Pressman and Marier to be generally well qualified.

74. Additional information about the credentialing process and the specific requirements of various hospitals came from certain hospital by-laws introduced into evidence. (*See, e.g.*, JX 46, 48, 67, 72, 76, 78–79, 81, 138, 140–43.)

75. Credentialing is a process that hospitals employ to determine what doctors will be allowed to perform what tasks within that hospital. (Doc. 193 at 11; *see also, e.g.*, Doc. 195 at 23–27; Doc. 168-5 at 24.)

76. Part of this process involves the hospital's granting or denying "admitting privileges." (*See, e.g.*, Doc. 193 at 20; Doc. 195 at 17, 23–25.) These privileges govern whether or not a physician is authorized to admit and treat a patient at that hospital and what care, services and treatment the physician is authorized to provide. (*See, e.g.*, Doc. 193 at 20–21; Doc. 195 at 23, 25–26.)

77. Admitting privileges are related to but not the same as being on the "medical staff" of a hospital. (Doc. 193 at 11; Doc. 195 at 25–26.)

78. There is no requirement that a physician have admitting privileges or be on the medical staff at a hospital in order to practice medicine. (*See, e.g.*, Doc. 195 at 26.) Many physicians who do not have a hospital based practice, i.e. do not intend to admit and treat their patients in a hospital setting, have neither as there is no need for staff or admitting privileges under those circumstances. (*See, e.g.*, Doc. 175 at 75; Doc. 192 at 41–42; Doc. 195 at 75.)

79. There is no state or federal statute which governs the rules for the granting or denial of hospital admitting privileges in Louisiana.[24] *Cf. Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 792 (7th Cir. 2013) ("The criteria for granting admitting privileges are multiple, various, and unweighted."). Rather, partly as a consequence of this absence, these rules vary from hospital to hospital and are governed by each one's distinct by-laws.[25] (*See, e.g.*, Doc. 193 at 12,

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[24] While one statute, commonly known as the Church Amendment, does impose a type of germane privileges requirement on hospitals accepting federal funds, 42 U.S.C. § 300a-7(c)(1)(B), this statute was not shown to apply to the hospitals involved in this case, *see infra* note 32.

[25] *Cf.* AM. MED. ASS'N, OPINION 4:07 - STAFF PRIVILEGES (June 1994) ("Privileges should not be based on numbers of patients admitted to the facility or the economic or insurance status of the patient. . . . Physicians who are involved in the granting, denying, or termination of hospital privileges have an ethical responsibility to be guided primarily by concern for the

15; Doc. 195 at 28.)

80. Specifically, there is no state or federal statute which defines or sets uniform standards for the categories of admitting privileges a hospital may grant. (Doc. 193 at 11–12.) Like other rules, these are therefore set by each hospital's by-laws. (*Id.*; *see also, e.g.*, Doc. 195 at 28; JX 81 at 1798.) To make matters more confusing, the terms used to describe those categories (e.g. "active admitting privileges", "courtesy admitting privileges", "clinical admitting privileges") vary from hospital to hospital. (*See, e.g.*, Doc. 190 at 167; Doc. 191 at 104; Doc. 193 at 11–12; Doc. 195 at 28.)

81. Similarly, terms like "medical staff", "active staff", "courtesy staff", "clinical staff" vary among hospitals. (Doc. 191 at 35; Doc. 193 at 12; Doc. 195 at 28; *cf.* JX 79 at 1707–12.)

82. For example, at some hospitals, an "active" staff appointment does not, alone, automatically entitle the physician to admit patients. (*See, e.g.*, JX 46 at 185; JX 79 at 1673; JX 141 at 3259–60.)

83. Because of the varying definitions given to the categories of admitting privileges and the varying requirements for the attainment of same, whether a physician has been given "active admitting privileges" or is a "member in good standing on the medical staff" within the meaning of Act 620 entirely depends upon the specific definition, requirements and restrictions imposed by a given hospital in a given circumstance. (*See, e.g.*, Doc. 193 at 12.)

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welfare and best interests of patients in discharging this responsibility."). The evidence presented in this case shows that these aspirational goals are not reflected in the by-laws of the Louisiana hospitals whose rules and practices are before the Court.

84. Unlike some states,[26] there is also no statute or rule in Louisiana which sets a maximum time period within which a physician's application for admitting privileges must be acted upon. Thus, unless there is such a time limit in the hospital's by-laws, a hospital can effectively deny a doctor's application of privileges by never acting on it, a decision on any one doctor's application permanently delayed without a consequence being effected or a reason being given. A definite decision stays unreached–but, with his or her request suspended, the relevant doctor's privileges remain, as a matter of fact and law, nonexistent. In this Ruling, the Court uses the term "de facto denial" of privileges to describe this circumstance.[27]

85. At some hospitals in Louisiana, there are suggested time frames in which hospitals should review admitting privileges applications. (JX 72 at 1320–23; *see also*, *e.g.*, JX 67 at 857–58; JX 76 at 1444–47.) However, those guidelines are not requirements, and there is no legal

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[26] Texas sets a 170 day time limit within which a hospital's credentialing committee must take final action on a completed application for medical staff membership or privileges. TEX. HEALTH & SAFETY CODE § 241.101; *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583, 600 (5th Cir. 2014)("*Abbot II*") (making this point).

[27] In other contexts, this notion has appeared. *See, e.g.*, *Khorrami v. Rolince*, 539 F.3d 782, 786 (7th Cir. 2008) (observing that a judicial ruling's delay can sometimes be "so long . . . that the delay becomes a *de facto* denial"); *Morgan v. Gandalf, Ltd.*, 165 F. App'x 425, 431 (6th Cir. 2006) (construing a court's failure to explain its reason as a "*de facto* denial" and reviewing such a denial for abuse of discretion); *Omnipoint Communc'ns Enters., L.P. v. Zoning Hearing Bd. of Easttown Twp.*, 331 F.3d 386, 393 (3d Cir. 2003) (observing that under Pennsylvania law, a de facto exclusion exists "where an ordinance permits a use on its face, but when applied acts to prohibit the use throughout the municipality" (internal quotation marks omitted)); *Alexander v. Local 496, Laborers' Int'l Union*, 177 F.3d 394, 408–09 (6th Cir. 1999) (finding that a "longstanding and demonstrable policy" where the union's "working-in-the-calling" rule, which was memorialized in its constitution and bylaws, resulted in the "de facto exclusion" of African Americans from union membership). Seemingly, though also in other contexts, the Fifth Circuit has recognized such a possibility. *See Chevron USA, Inc. v. Sch. Bd. of Vermilion Parish*, 294 F.3d 716, 720 (5th Cir. 2002) ("Arguably, the district court's order was a de facto denial of class certification (although the parties have not treated it as such, and no motion for class certification was ever filed).").

recourse for an applicant if the hospital fails to act on the application within the suggested time period. (*See, e.g.*, JX 67 at 858–59; JX 72 at 1320–24; JX 109 ¶ 27.) For example, Tulane University Medical Center ("Tulane") has an expectation, but has adopted no requirement, that applications will be processed within 150 days. (JX 78 at 1554.) If the Board of Trustees has not taken action on the application within 150 days, the applicant must repeat the verification process to ensure the information contained therein is still accurate. (*Id.*)

86. A hospital's failure to act on an application by either approving or denying it may result in the hospital considering the application withdrawn. (*See, e.g.*, Doc. 195 at 93; JX 71 at 1279.) In this additional respect, a hospital's failure to act is, in effect, a de facto denial of the application.

87. While a physician's competency is a factor in assessing an applicant for admitting privileges, it is only one factor that hospitals consider in whether to grant privileges. (*See, e.g.*, Doc. 190 at 158–59; Doc. 195 at 25–26; Doc. 192 at 50–51; Doc. 168-5 at 17; Doc. 168-6 at 12; JX 110 ¶ 10; JX 168 ¶¶ 11–13, 17; PX 183.)

88. Defendant argues: "When Louisiana hospitals decide whether to grant a physician staff membership, privileges to admit patients, or privileges to perform particular procedures, hospital by-laws indicate that they may make such determinations based on the physician's prior and current practice, and indicia of the physician's clinical competence."[28] (Doc. 200 ¶ 114 at 38 (citing to JX 2873; JX 1838; JX 1542–43; JX 852–53).)

89. The Court finds that this is only partly true because both by virtue of by-laws and how

[28] The Defendant's briefing cites exhibits by Bates page numbers rather than exhibit numbers.

privileges applications are handled in actual practice, hospitals may deny privileges or decline to consider an application for privileges for myriad reasons unrelated to competency. Examples include the physician's expected usage of the hospital and intent to admit and treat patients there, the number of patients the physician has treated in the hospital in the recent past, the needs of the hospital, the mission of the hospital, or the business model of the hospital. Furthermore, hospitals may grant privileges only to physicians employed by and on the staff of the hospital. And university-affiliated hospitals may grant privileges only to faculty members. These possible variances in causes and justification for any particular denial are attested to by this case's evidentiary submissions and testimony. (*See, e.g.*, Doc. 195 at 25–26; Doc. 190 at 123, 168–70; Doc. 193 at 82–83; JX 109 ¶¶ 27–28; JX 110 ¶ 10; JX 168 ¶¶ 11–13, 17; Doc. 168-5 at 6, 23.)

90. An apparently benign example of such a non-competency based, business driven reason for denying privileges is the denial of Doe 1's application to the Minden Medical Center ("Minden"). (JX 50 at 318; Doc. 192 at 50–51.) In declining his application for staff membership and clinical privileges, Minden's Medical Staff Coordinator wrote to Doe 1: "Since we do not have a need for a satellite primary care physician at this time, I am returning your application and check." (JX 50 at 318; *see also* JX 72 at 1323.)

91. When they had full OB/GYN practices delivering babies and performing gynecological surgery, Does 2, 4, and 6 had no problem obtaining and maintaining admitting privileges at a number of hospitals. (*See, e.g.*, Doc. 168-5 at 6–8; JX 109 ¶ 30.) However, under Act 620, for reasons unrelated to competency, they are now unable to secure active admitting privileges. (*See, e.g.*, Doc. 191 at 24–26; Doc. 168-5 at 16–17; JX 109 ¶¶ 23, 30, 31–34.)

92. Another example of a non-competency based application criteria is that some hospitals

require the physician seeking privileges to live and/or practice within a certain distance of the hospital. (JX 83 at 1865; JX 139-a at 2925; JX 79 at 1679–83.) Does 2 and 5 travel significant distances from their respective homes to provide abortion services and would not be able to meet this criteria for hospitals within 30 miles of some or all of the clinics where they provide abortions. (Doc. 191 at 20–21; Doc. 168-6 at 4, 11–13; JX 109 ¶¶ 31–36.)

93. Defendant argues that "[t]here is no evidence suggesting that, in making the determinations about staff membership or privileges, Louisiana hospitals discriminate against physicians based on whether they provide elective abortions." (Doc. 200 ¶ 115 at 38 (citing Marier's testimony, as it appears on Doc. 193 at 83–86).) In his testimony, however, Marier only acknowledged that he personally knew of no hospitals which refused to extend privileges to a doctor "simply because he or she performs an abortion." (Doc. 193 at 83–85.) Regardless, to the extent Marier's testimony can be so construed, the Court finds his testimony on this point to be not credible and contradicted by an abundance of evidence introduced at the hearing demonstrating that hospitals can and do deny privileges for reasons directly related to a physician's status as an abortion provider. (*See, e.g.*, Doc. 168-6 at 12; Doc. 190 at 53; JX 109 ¶¶ 28, 30, 39.)

94. For instance, Doe 1 contacted the director of the Family Medicine Department at University Health Hospital in Shreveport ("University" or "University Health")[29] where he had done his residency in family medicine. Dr. Doe 1 was initially told that he would be offered a job as a faculty member teaching sports medicine which would "take care of the admitting privileges

[29] This hospital is a teaching hospital associated with LSU Medical School and is sometimes referred to as LSU Shreveport Hospital. (*See, e.g.*, JX 79; Doc. 192 at 19, 47.)

thing." (Doc. 192 at 45.) Doe 1 was told that the application forms for admitting privileges would be forwarded to him. (*Id.*)

95. When Doe 1 did not get the application forms and inquired, he was told by the director of the department that he would not be offered a position because "there was some objection from certain staff about [Doe 1] coming to work there because of where [he] work[ed], at Hope Medical." (*Id.* at 45–46.)[30]

96. This same essential response was also given to Doe 2 when he attempted to upgrade his courtesy privileges at University Health. (Doc. 191 at 24–26.)

97. There is no Louisiana statute which prohibits a Louisiana hospital or those individuals charged with credentialing responsibilities from declining an application for admitting privileges based on the applicant's status as an abortion provider.[31]

98. Section 40:1299.32 provides: "No hospital, clinic or other facility or institution of any kind shall be held civilly or criminally liable, discriminated against, or in any way prejudiced or

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[30] This testimony was objected to as hearsay, which objection was overruled. (Doc. 192 at 46.) It was overruled for two reasons. First, the ordinary rules of admissibility are relaxed in a preliminary injunction hearing and hearsay may be admitted. *E.g.*, *Fed. Savings & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987); *Sierra Club, Loan Star Chapter v. F.D.I.C.*, 992 F.2d 545, 551 (5th Cir. 1993); *see also* 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2949 (3d. 2015). Second, as this testimony was presented so as to explain Doe's failure to make formal application for privileges at University, the testimony was not offered to prove its truth and was thus, for this limited purpose, not hearsay. FED. R. CIV. P. 801(c)(2).

[31] Texas law, in contrast, "specifically prohibits discrimination by hospitals or health care facilities against physicians who perform abortions." TEX. OCC. CODE § 103.002(b). Texas law further provides a private cause of action for an individual to enforce this non-discrimination clause. *Id.* § 103.003, *cited in Abbott II*, 748 F.3d at 598 & n.13; *accord Whole Woman's Health v. Cole*, 790 F.3d 563, 596 n.44 (5th Cir. 2015) (per curiam), *modified by* 790 F.3d 598 (5th Cir. 2015), *stayed by* 135 S. Ct. 2923, 192 L. Ed. 2d 920 (2015), *cert. granted*, 136 S. Ct. 499, 193 L. Ed. 2d 364 (2015).

damaged because of any refusal to permit or accommodate the performance of any abortion in said facility or under its auspices." LA. R.S. § 40:1299.32.[32]

99. The Court was surprised that Defendant's credentialing expert, Marier, was unaware of this provision, but Marier agreed that, by virtue of this provision, "a hospital, if it chooses to, may discriminate against any abortion provider with no consequence under Louisiana law." (Doc. 193 at 84.)

100. Section 40:1299.33(C) states: "No hospital, clinic, or other medical or health facility, whether public or private, shall ever be denied government assistance or be otherwise discriminated against or otherwise be pressured in any way for refusing to permit facilities, staff or employees to be used in any way for the purpose of performing any abortion." LA. R.S. § 40:1299.33(C).[33]

101. While Doe 2 ultimately received limited privileges at Tulane, the negotiations that led to these privileges being granted clearly demonstrate that Doe 2's status as an abortion provider was a central issue in the decision making process over whether to grant him privileges and the limitations those privileges would have. (*See* JX 161–81; *see infra* Part VIII.)

102. There are ways in which the hospital staff's and/or the general public's hostility to abortion and abortion providers can be injected into the credentialing process. For instance, many

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[32] The statute was introduced as an exhibit. (PX 183.) Not before the Court is the efficacy of this state statute in the face of the Church Amendment, which prohibits a hospital which receives funding under the Public Health Service Act, 42 U.S.C. § 201 *et seq.*, from discriminating in employment against those who perform abortions. 42 U.S.C. § 300a-7. Furthermore, no evidence was introduced as to whether any of the hospitals where credentials were sought in this case, or in Louisiana generally, receive such funds. The text of the Church Amendment was submitted as an exhibit. (DX 162.)

[33] This subsection was introduced as an exhibit. (PX 182.)

applications for privileges require references from at least two physicians who recently have observed the applying physician as to applicant's medical skill and "character." (JX 143 at 3357; JX 79 at 1680–81; JX 83 at 1873; JX 143 at 3351.) For example, Minden prefers that an applicant's peer recommendations come from physicians already on staff at that hospital. (JX 72 at 1300.) Although competent, an abortion provider can face difficulty in getting the required staff references because of staff opposition to abortion. (*See, e.g.*, Doc. 168-6 at 12; Doc. 190 at 53; JX 109 ¶¶ 28, 30, 39.)

103. Other hospitals' admitting privileges applications require the applying physician to identify another physician on staff who will "cover" his or her patients if the applying physician is unavailable, frequently called a "covering physician." (JX 78 at 1539; JX 79 at 1677; JX 138 at 2855; JX 83 at 1866.) As summarized below, the evidence shows that opposition to abortion can present a major, if not insurmountable hurdle, for an applicant getting the required covering physician.

104. For example, Doe 5 has applied for admitting privileges at three hospitals in the Baton Rouge area: Woman's Hospital in April or May of 2014 and Lane Regional Medical Center and Baton Rouge General Medical Center in July of 2014. (Doc. 168-6 at 11.) Doe 5 has been unable to find a local physician who is willing to provide coverage for him when he is not in Baton Rouge, which all three hospitals require. (JX 109 ¶¶ 32–33; JX 110; Doc. 51; Doc. 168-6 at 11–12.)[34] Doe 3 also has had difficulty finding physicians to cover for him due to the animosity

[34] This continues to be an obstacle to Doe 5 getting privileges in Baton Rouge. (JX 193.) While Dr. Doe 2 was ultimately able to get limited privileges, it appears that this difficulty may have played a role in the limitations imposed on his privileges.

towards him as an abortion provider. (Doc. 190 at 11–13.) While Doe 2 ultimately got limited privileges at Tulane, (JX 183), the evidence therefore demonstrates that staff physicians who oppose abortion present a real obstacle, *see infra* Part VIII.B.

105. Some other non-competency based admitting privileges requirements create a particular obstacle for abortion providers whose practice is not hospital based, who do not admit patients to a hospital as a part of their practice, and who do not perform surgeries at a hospital.

106. As one example, hospitals often grant admitting privileges to a physician because the physician plans to provide services in the hospital. (*See, e.g.*, Doc. 195 at 24–25; Doc. 193 at 66.) In general, hospital admitting privileges are not provided to physicians who never intend to provide services in a hospital. (Doc. 195 at 23–25, 27, 74–75; Doc. 193 at 66–67.)

107. Thus, in connection with the applications of Does 1 and 2 at Willis-Knighton Medical Center ("WKMC"), Willis-Knighton South ("WKS"), and Willis-Knighton Pierremont Health Center ("WKP") in Shreveport, (JX 53, 144), the Willis-Knighton Health System ("Willis-Knighton"), which runs these three (as well as other) entities, has required these doctors to submit data on hospital admissions, patient management and consultations of patients in the past 12 months in a hospital. (Doc. 192 at 75–76; JX 128; JX 89 at 1950.)

108. Because their abortion practice is not hospital based, neither doctor can possibly comply with that requirement. In the case of Doe 1, since he formally responded to a hospital's request for more information regarding his history of admitting patients during the preceding twelve months, saying he had no such information, he has never again heard from the hospital - there being neither a denial nor an approval of his application. (Doc. 192 at 75–78.) Similarly, when Doe 2 gave the hospital the only information in his possession, he received formal notice

that this was insufficient and "[w]ithout that [additional] information, your application remains incomplete and cannot be processed." (JX 89 at 1950.) Doe 2 could do nothing else, explaining, "I'm in a Catch-22 basically. I can't provide information I don't have." (Doc. 191 at 79–80.)

109. Even if these Does and similar practitioners somehow got admitting privileges, it is unlikely they would be able to keep them. If over a period of two to three years, a physician has not admitted any patients to the hospital, a hospital credentialing committee is likely to understand that this physician no longer requires admitting privileges. (*See, e.g.*, Doc. 195 at 91.) Because, by all accounts, abortion complications are rare, (*See, e.g.*, Doc. 168-5 at 14, 16, 20–21; Doc. 193 at 81–82; Doc. 195 at 38–39), an abortion provider is unlikely to have a consistent need to admit patients.

110. Furthermore, surgical privileges are meant for providers who plan to perform surgeries at the hospital. (Doc. 195 at 95–96.)

111. For the reasons outlined above, the Court finds that the Louisiana practice of credentialing, i.e. a hospital's consideration of and acting (or not acting) upon applications for admitting privileges, creates particular hardships and obstacles for abortion providers.

112. The efforts made by Does 1–6 to comply with the admitting privileges requirement of Act 620, and the result of those efforts, is reviewed in another section of this Ruling. *See infra* Part VIII.

E. The Climate

113. The evidence is overwhelming that in Louisiana, abortion providers, the clinics where they work and the staff of these clinics, are subjected to violence, threats of violence,

harassment and danger.

114. Defendant offered no evidence to counter Plaintiffs' evidence on this point. Rather, Defendant makes two arguments: first, some of the Plaintiffs' evidence on this point is hearsay, and second, the violence is "legally irrelevant" to the undue burden analysis. (Doc. 201 at 14–15.) The issue of legal relevance is addressed in the Conclusions of Law section of this Ruling. *See infra* Parts XI–XII.

115. Defendant objects to the testimony and exhibits cited in Plaintiffs' proposed findings and conclusions (Doc. 196 ¶¶ 79, 84, 87, 89), as hearsay. However, almost all of this testimony was not objected to by Defendant at the time it was introduced. Moreover, in some instances, this testimony came in by way of exhibits offered jointly by the Parties or in questions asked by counsel for the Defendant.

116. But even if the objected-to evidence were excluded, there is a mountain of uncontradicted and un-objected to evidence supporting this conclusion, some of which is summarized below.

117. In addition to the harassment and violence, as was discussed briefly in the previous section and will be discussed in more detail in the section reviewing the doctors' efforts to gain admitting privileges, the personal and/or religious feelings against abortion by the public, some members of the medical profession and hospital administrators has had a negative effect on the doctors' efforts to gain admitting privileges. (*See, e.g.*, Doc. 168-6 at 12; Doc. 190 at 53; Doc. 191 at 24–26; Doc. 192 at 45–46; JX 109 ¶¶ 28, 30, 39.)

118. Indeed, after reviewing Plaintiffs' motion to allow the Plaintiff doctors to use pseudonyms as well as their supporting affidavits, the United States Magistrate Judge concluded:

"The Court is satisfied that the potential for harassment, intimidation and violence in this case, particularly recent instances of such conduct, both nationwide and in Louisiana, justifies the unusual and rare remedy of allowing the individual Plaintiffs to proceed anonymously." (Doc. 24 at 3; *see also* Doc 190 at 108; Doc. 191 at 12; Doc. 192 at 6.) A similar order was signed when Does 3–6 were added as parties. (Doc. 55.)

119. Also recognizing these legitimate safety concerns, Defendant joined with Plaintiffs in a Joint Consent Motion Regarding Confidential Trial Procedures, (Doc. 158), granted on June 23, 2015, (Doc. 161). These procedures included allowing Does 1–3 to testify from behind a screen.[35] (Doc. 158 at 1.)

120. The security concerns even went beyond the Parties, however. A request for anonymity was made on behalf of a hospital which had granted privileges to Doe 5 and the non-party doctors who assisted in the privileges request. No objection was made by any party and the Court ordered this hospital to be called "Hospital C" and the doctor involved for that hospital," Dr. C." (*Id.*) Other doctors involved in granting the limited privileges to Doe 2 were ordered to be called "Dr. A" and "Dr. B." (*Id.*)

121. In order to insure the use of the pseudonyms and protect the identities of Plaintiff doctors as well as certain non-party doctors and hospitals, the Plaintiffs and Defendant filed a joint motion to redact portions of the trial transcript, which the Court granted. (Doc. 180.) By their filings in this case, therefore, Defendant and Plaintiffs have implicitly acknowledged the charged emotions generated by this particular issue within and outside this state.

[35] The screen was positioned so as to protect the identity of the witness from the public but allowed the Court to see and judge the demeanor of the witnesses.

122. The evidence, in turn, leaves no question about the dangers and hostility regularly endured by Plaintiffs.

123. Each of Louisiana's five clinics experiences frequent demonstrations by anti-abortion activists. (Doc. 190 at 24, 108; Doc. 191 at 13; JX 109 ¶¶ 10–12; JX 117 ¶ 6; JX 112 ¶ 2; JX 113 ¶ 2; Doc. 168-6 at 25.) These demonstrations require some clinics to have additional security on site. (Doc. 190 at 23.)

124. Hope Clinic in Shreveport has been the subject of three violent attacks: once by a man wielding a sledgehammer, once by an arsonist who threw a Molotov cocktail at the clinic, and once by having a hole drilled through the wall and butyric acid poured through it. (Doc. 190 at 23; JX 116 ¶ 8.)

125. In the fall of 2014, following passage of the Act, anti-abortion activists attempted to interfere with Doe 5's admitting privileges application at Woman's Hospital in Baton Rouge by sending threatening letters to the hospital. (JX 110 ¶ 14; JX 109 ¶ 29.) Woman's Hospital also had to remove anti-abortion activists from its medical staff offices due to the activists' disruptive conduct. (JX 110 ¶ 14.)

126. When Doe 5 worked as a hospital employed physician, protests outside the hospital caused the hospital administration to give him an ultimatum: quit performing abortions or resign from the hospital staff. (JX 110 ¶ 21; *see also* Doc. 168-6 at 23–24.) In his words, he "was therefore forced to stop working at the hospital so that . . . [he] could continue providing services at Women's Clinic and Delta Clinic." (JX 110 ¶ 21; *see also* JX 109 ¶ 30.)

127. After Doe 5 recently acquired privileges at a local hospital (Hospital C), anti-abortion activists began sending threatening letters to that hospital causing him to fear that he might lose

the privileges that he acquired. (JX 110 ¶ 20; *see also* JX 109 ¶ 39.)

128. Anti-abortion activists picketed the school of the children of a doctor formerly affiliated with Delta, after which that doctor quit. (Doc. 168-4 at 23–24.)

129. A physician quit working at Causeway after receiving harassing telephone calls at his private practice and anti-abortion activists demonstrated outside the hospital where he worked. (Doc. 168-8 at 8.)

130. Doe 1 works at Hope–but he does so in fear of violence. (Doc. 192 at 78–79.)

131. Doe 2 has received threatening phone calls, has been followed into restaurants and accosted, and has been shouted at with profanity and told that he was going to hell. (Doc. 191 at 12–13.)

132. Doe 2 was forced to leave a private practice when the practice's malpractice insurer refused to cover him if he continued to perform elective pregnancy terminations. (*Id.* at 16–17.)

133. Doe 3 has been threatened as a result of his work at Hope Clinic. (JX 113 ¶ 3.) Last year, anti-abortion activists from outside Louisiana left fliers on neighbors' mailboxes calling him an abortionist and saying they wanted to convert him to Jesus. (Doc 190 at 108–09.) Local police have had to patrol his neighborhood and search his house before he entered. (JX 113 ¶ 4.)

134. These individuals also approached Doe 3's regular medical practice patients as they tried to enter his office, requiring the building security officers to escort the activists off the premises. (*Id.* ¶ 3.) These individuals told Doe 3's patients that he killed babies and that they should not see him. (Doc. 190 at 109.)

135. Doe 3 fears that, if the other Louisiana abortion providers are not able to obtain admitting privileges, he will become an even greater target for anti-abortion violence. (JX 113 ¶¶

6–7.) He specifically testified that "all [these individuals] have to do is eliminate [him] as they have Dr. Tiller and some of the other abortion providers around the country" to eliminate abortion entirely in northern Louisiana. (Doc. 190 at 174.)

136. Doe 3 also explicitly emphasized that he is concerned that such individuals could "cause a lot of other . . . problems that would affect [his] ability to perform the rest of [his] practice." (*Id.* at 174–75; *cf.* JX 113 ¶¶ 6–7.)

137. Doe 3 has difficulty arranging coverage for his OB/GYN practice because other OB/GYN doctors in the Shreveport area refuse to cover his practice as a result of his work at Hope. (Doc. 190 at 111–13.)

138. As a result of his fears, and the demands of his private OB/GYN practice, Doe 3 has testified that if he is the last physician performing abortion in either the entire state or in the northern part of the state, he will not continue to perform abortions. (*Id.* at 174–76.)

139. Anti-abortion activists have picketed the homes – and neighbors' homes – of Does 5 and 6, also distributing threatening flyers. (Doc. 168-6 at 24; JX 109 ¶ 11.)

140. Anti-abortion activists have targeted at least one physician who agreed to provide emergency care for abortion complications, even though he did not provide abortions himself. (Doc. 168-6 at 11, 24–25; JX 110 ¶ 20.)

VI. Act 620

A. Text of Act 620 and Related Provisions

141. The challenged statute is Act 620. LA. R.S. § 40:1299.35.2.

142. Act 620 amended Louisiana Revised Statutes § 40:1299.35.2(a), 1299.35.2.1, and

2175.3(2) and (5). (*Id.*)

143. On June 12, 2014, Governor Bobby Jindal signed Act 620 into law, with an effective date of September 1, 2014. (*See, e.g.*, Doc. 109 at 4.)

144. Act 620 provides that every physician who performs or induces an abortion shall "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." LA. R.S. § 40:1299.35.2A(1).

145. The Act defines "active admitting privileges" to mean 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.* § 40:1299.35.2A(2)(a).

146. Regulations connected to the Act and promulgated after the commencement of this litigation by DHH use the same definition of "active admitting privileges." LA. ADMIN CODE tit. 46, § 4401.[36] These regulations note that federal litigation is pending on the issue of admitting privileges and that licensing provisions regarding admitting privileges will only be enforced pursuant to an order, judgment, stipulation, or agreement issued in this case. *Id.* § 4423.

147. The Act provides that any outpatient abortion facility that knowingly or negligently provides abortions through a physician who does not satisfy the Act is subject to denial, revocation, or non-renewal of its license by DHH. LA. R.S. § 40:1299.35.2A(1).

148. The Act provides that a physician who fails to comply with the admitting privileges requirement can be fined $4,000 per violation. *Id.* § 40:1299.35.2A(2)(c).

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[36] A copy of this regulation was submitted as a joint exhibit. (JX 137.)

149. In addition, discipline by the Board is made an enforcement provision in Act 620. *Id.* § 40:1299.35.2.1E. The Board has the authority to take disciplinary action against any physician. *Id.* § 37:1261 *et seq.* The Board has the authority to investigate physicians for violations of law, such as Act 620. *Id.* § 40:1299.35.2E. By violating this law, physicians could be subjected to fines or other sanctions, including the suspension or revocation of the physician's license to practice medicine. (Doc. 168-10 at 12, 14–15; *see also* Doc. 31 at 4 n.4.)

B. Louisiana's Policy and Other Legislation Regarding Abortion

150. The Louisiana legislature has codified a statement of opposition to legalized abortion, stating:

> It is the intention of the Legislature of the State of Louisiana to regulate abortion to the extent permitted by the decisions of the United States Supreme Court. The Legislature does solemnly declare and find in reaffirmation of the longstanding policy of this State that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this State. Further the Legislature finds and declares that the longstanding policy of this State is to protect the right to life of the unborn child from conception by prohibiting abortion impermissible only because of the decisions of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced.

LA. R.S. § 40:1299.35.0; *see also State v. Aguillard*, 567 So. 2d 674, 676 (La. Ct. App. 1990) (observing that "the Louisiana legislature has expressed its disfavor for abortion" with this provision).

151. Consistent with this explicit statement of legislative intent, as shown below, Louisiana has enacted other laws that place restrictions on women seeking abortion in the state,

and doctors and clinics who perform abortions.

152. In 2006, the Louisiana legislature passed a "trigger" ban – banning abortion with only a limited exception to save a woman's life – to take immediate effect should *Roe v. Wade* be overturned or a constitutional amendment be adopted to allow states to ban abortion. S.B. 33, 2006 Leg., Reg. Sess. (La. 2006) (codified as LA. R.S. §§ 40:1299.30, 14.87). The trigger ban carries a criminal penalty of up to 10 years' imprisonment "at hard labor" for a physician performing an abortion. LA. R.S. §§ 40:1299.30D, 14:87D(1).

153. Another law mandates that every woman undergo an ultrasound before an abortion, even when not medically necessary, and that she be required to listen to an oral description of the ultrasound image. *Id.* §§ 40:1299.35.2B–D, 40:1299.35.6, 40:1299.35.12.

154. Louisiana requires a two-trip, 24-hour waiting period for women, and further mandates that a physician – and not another medical professional – give certain state-mandated information designed to discourage abortion to his patient; violation of this provision carries criminal penalties. *Id.* §§ 40:1299.35.2D(2), 40:1299.35.6, 40:1299.35.19.

155. The Louisiana legislature prohibits public funding of abortion for victims of rape or incest unless the victim reports the act to law enforcement and certifies a statement of rape or incest that is witnessed by the physician. *Id.* §§ 40.1299.34.5, 40:1299.35.7.

156. Physicians who provide for the "elective termination of an uncomplicated viable pregnancy" are expressly excluded from malpractice reform provisions afforded to all other health care practitioners under the state's medical malpractice protection laws. *Id.* §§ 40.1299.31–39A, 40:1299.41(K).

157. The legislature has passed laws prohibiting insurance coverage of abortion in state

exchanges under the Affordable Care Act. *Id.* § 22:1014. Louisiana does not allow women to obtain insurance coverage for abortion even when a woman's life is endangered or when the pregnancy is a result of rape or incest. *Id.*

158. The Louisiana legislature permits hospitals to refuse to accommodate the performance of abortions. *Id.* § 40:1299.31–33.

159. Louisiana has no law which prohibits a hospital from discriminating against a physician applying for privileges there based on that physician's status as an abortion provider. *Compare* TEX. OCC. CODE § 103.002(b).

160. The effect of Act 620 is thus significantly different from admitting privileges requirements in states where physicians are protected from discrimination. *See, e.g.*, *Cole*, 790 F.3d at 563; *see also Abbott II*, 748 F.3d at 598 n.13.

C. Drafting of Act 620

161. Act 620 was modeled after similar laws which have had the result of closing abortion clinics in other states. On May 5, 2014, Ms. Dorinda Bordlee ("Bordlee"), the Vice President and Executive Counsel of the Bio Ethics Defense Fund, an anti-abortion advocacy group, sent the draft's primary legislative sponsor, Representative Katrina Jackson ("Jackson"), an email regarding a similar statute passed in Texas that had "tremendous success in closing abortion clinics and restricting abortion access in Texas." (Doc. 191 at 200; Doc. 196-5 at 2; Doc. 196-10 at 1.)[37] Bordlee told Jackson that "[Act 620] follows this model." (Doc. 191 at 200; Doc. 196-5 at

[37] Many of the Joint Exhibits mentioned in this section, including email exchanges to and from pro-life advocacy groups and others participating in the drafting of what came to be Act 620, were the subject of Defendant's Motion in Limine, (Doc. 95). Defendant argues that this

2; Doc. 196-10 at 1.)

162. Evidence received demonstrates the coordination among advocacy groups, Jackson, and DHH employees regarding efforts to restrict abortion. (*See, e.g.*, Doc. 191 at 199–202, 211–13, 215–16, 220–21; JX 3, 6–16.)

163. In a press release regarding Act 620 released on March 7, 2014, Jindal declared his position that Act 620 was a reform that would "build upon the work . . . done to make Louisiana the most pro-life state in the nation." (PX 174 at 1; Doc. 191 at 224–27.) Jindal stated:

> Promoting a culture of life in Louisiana has been an important priority of mine since taking office, and I am proud to support [Act 620] this legislative session. In this state, we uphold a culture of life that values human beings as unique creatures who were made by our Creator. [Act 620] will build upon all we have done the past six years to protect the unborn.

(PX 174 at 1.)

164. Indirectly referencing the legislation just summarized, Jackson is quoted in this press release as saying that Act 620 "will build on our past work to protect life in our state." (*Id.* at 2.)

165. Similarly, in her testimony before the Louisiana House Committee in support of Act 620, Kliebert testified that Act 620 would strengthen DHH's ability to protect "unborn children." (Doc. 191; JX 140 at 1.)

166. The talking points prepared for Secretary Kliebert by Representative Jackson's office stated that DHH was "firmly committed to working with Representative Jackson and the

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evidence is legally irrelevant to the purpose of Act 620. For reasons stated in its ruling, (Doc. 138), and reiterated in this Ruling's Conclusions of Law, *see infra* Parts XI–XII, the Court denied the motion. The Court finds that while this evidence is insufficient under Fifth Circuit jurisprudence for Plaintiffs to meet their burden under the purpose prong of the undue burden test, it is nonetheless relevant and admissible.

Legislature to continue to work to protect the safety and well-being of Louisiana [women] and the most vulnerable among us, unborn children." (Doc. 191 at 222–23; *see also* JX 24 at 2–4.)

D. Official Legislative History of Act 620[38]

167. Act 620 (at the time known as HB 388) was considered by the House Health and Welfare Committee on March 9, 2014, and the Senate Health and Welfare Committee on May 7, 2014. The House and Senate Committees heard extensive testimony regarding the purposes of proposed statute. (DX 119 at 1–30, 39–67.)

168. More specifically, the House and Senate Committees heard testimony that the proposed statute was intended to safeguard the health and safety of women undergoing abortions in outpatient clinics in Louisiana. (*Id.*)

169. For example, the House and Senate Committees heard testimony that:

- Abortion carries the risk of serious complications that could require immediate hospitalization. (*Id.* at 3, 5.)
- Women who experience abortion complications frequently rely on the care of emergency room physicians, who often must call on the assistance of a specialist in obstetrics or gynecology. (*See id.* at 4, 5, 8.)
- "[M]ost emergency departments lack adequate on-call coverage for medical and

[38] The official legislative history, submitted as one document, (DX 119), contains the reports of the House and Senate as well as a transcript of various senators' comments, each of which commence with their own page number. Thus, for the sake of easy location, this Court cites to the page number of the pdf document itself. Within Document Number 119, the House report appears on pages 2 through 30, the Senate report on pages 33 through 67, and the transcript of the Senate floor debate on pages 69 through 73.

surgical specialists, including obstetricians and gynecologists." (*Id.* at 48.)

- The history of health and safety violations by Louisiana abortion clinics raises concerns about the potential for serious abortion-related complications. (*Id.* 119 at 10.)
- Requiring outpatient abortion providers to have admitting privileges benefits the safety of women seeking abortion and also enhances regulation of the medical profession. (*Id.* at 3, 48.)
- For instance, the admitting privileges requirement improves the "credentialing process" for physicians by "provid[ing] a more thorough evaluation mechanism of physician competency than would occur otherwise." (*Id.* at 48.)
- The requirement also "acknowledges and enables the importance of continuity of care" for an abortion patient. (*Id.*)
- Additionally, the requirement "enhances inter-physician communication and optimizes patient information transfer and complication management." (*Id.*)
- Finally, the requirement "supports the ethical duty of care of the operating physician to prevent patient abandonment." (*Id.* at 3, 48.)
- A virtually identical admitting privileges requirement in Texas had recently been upheld by the U.S. Fifth Circuit as a reasonable measure for achieving these health and safety goals. (*Id.* at 48.)
- There was no obstacle preventing abortion providers from obtaining admitting privileges at Louisiana hospitals. (*Id.* at 9 (testimony that one Louisiana abortion provider already had admitting privileges).)

- Louisiana hospitals grant or deny admitting privileges "based entirely on [the applicant's] medical training and experience." (*Id.* at 50.)
- Louisiana hospitals have recognized categories of staff membership to accommodate physicians who are expected to admit low numbers of patients for a variety of reasons. (Id. at 50.)

170. Additionally, the House and Senate Committees also heard testimony that, unlike physicians performing surgical procedures in ambulatory surgical centers in Louisiana, physicians performing abortions in outpatient clinics had not previously been required to have any kind of hospital privileges. The committees heard testimony explaining that the proposed statute was designed to close that loophole and thus achieve greater consistency in the overall regulation of outpatient surgical procedures in Louisiana. (*See id.* at 2–4 (House committee testimony regarding goal of achieving greater consistency with ASC regulations), 41–43 (Senate committee testimony regarding same subject).)

171. For example, the House and Senate Committees heard testimony that:

- The Act was intended to bring outpatient abortion facilities in line with "the standard that is currently in place for [ASCs] as set forth in Louisiana Administrative Code, Chapter 45 … Section 4535." (*Id.* at 4.)
- The Act intended to "close a loophole" in Louisiana regulation by requiring outpatient abortion providers to have privileges comparable to those required for physicians performing outpatient surgery in ASCs. (*Id.* at 41–42.)
- The Act's requirement of admitting privileges is consistent with requiring surgical privileges for ASC physicians. (*Id.* at 49 (explaining that "the effect is the same

both in terms of … the credentialing process itself and in the application of the standards by the state").)

- In both cases, the privileges requirement is based on the "well-established principle … that a provider should not undertake a procedure unless he is qualified and able to take care of whatever complications there might be." (*Id.* at 49.)

172. The full House and Senate heard statements in support of HB 388 explaining that it was intended to protect "the safety of women" and ensure that "every physician performing any surgery, including abortions, does so in a prudent manner and with the best interest of each woman's health in mind," (*Id.* at 34–35), and also that it was intended to safeguard "the lives and safety of pregnant women who may experience short-term risk[s] of abortion, which can include hemorrhaging, uterine perforation, or infection," (*Id.* at 48).

173. The full House was informed that the proposed law tracked the Texas admitting-privileges law, HB 2, which had been upheld as constitutional by the U.S. Fifth Circuit Court of Appeals a week earlier. (*Id.* at 34–35 (referring to *Abbott II*).)

174. The Senate approved one amendment to the proposed statute, concerning the definition of admitting privileges, and rejected another amendment that would have eliminated the 30-mile radius requirement. (*Id.* at 69–70.)

175. The proposed statute passed both chambers, with 85 House members and 34 Senators voting in favor, and 88 House members concurring in the Senate amendment. See https://www.legis.la.gov/legis/ViewDocument.aspx?d=887948 (House final passage); https://www.legis.la.gov/legis/ViewDocument.aspx?d=903997 (Senate final passage); https://www.legis.la.gov/legis/ViewDocument.aspx?d=903981 (Senate amendment);

https://www.legis.la.gov/legis/ViewDocument.aspx?d=906861 (House concurrence) (all legislative websites last visited Aug. 24, 2015).

VII. The Purpose and Medical Need for and Reasonableness of Act 620

176. The evidence introduced to show the purpose of Act 620 came in several forms. The Plaintiffs offered: (1) press releases, public statement, emails, and similar evidence produced by public officials, lobbyists, advocacy groups and others involved or interested in the drafting and passage of Act 620; (2) the testimony of some of those involved in these communications; (3) Louisiana's legislatively stated "longstanding policy . . . to protect the right to life of the unborn child from conception by prohibiting abortion impermissible only because of the decisions of the United States Supreme Court . . . .," La. R.S. § 40:1299.35.0; and (4) expert testimony purporting to show two things: first, there is no medical need for Act 620 because legal abortion is safe, and second, that Act 620 is medically unreasonable in that Act 620 does not advance the health and safety of women undergoing abortions.

177. In support of her position, Defendant offered: (1) the text and legislative history of the Act, including testimony considered during the legislature's deliberations, and (2) expert testimony at trial purporting to show that the admitting privileges requirement is needed because of potential complications from abortions and that the Act is medically necessary and beneficial for the health and safety of a woman undergoing an abortion.

178. The Court carefully considered all the evidence introduced on this issue and makes the following findings of fact:

(A) A purpose of the bill is to improve the health and safety of women undergoing an

abortion.[39]

(B) Another purpose of the bill is to make it more difficult for abortion providers to legally provide abortions and therefore restrict a woman's right to an abortion.[40]

(C) There is a dispute medically and scientifically as to whether Act 620 serves a legitimate medical need and is medically reasonable.[41]

(D) Legal abortions in Louisiana are very safe procedures with very few complications.[42]

(E) The vast majority of women who undergo abortions in Louisiana are poor. (*See, e.g.*, JX 124 at 2480; Doc. 191 at 190–91; Doc. 190 at 34.) As a result of that poverty, the burden of traveling farther to obtain an abortion would be significant,

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[39] The Court relies primarily on the legislative history of the statute, (DX 119 at 1–30, 39–67), for this finding. While the Court had serious concerns about the credibility and bias of defense expert Dr. Damon Cudihy and Marier's expertise as it pertained to the subject of abortion practice, the Court forgoes a detailed analysis of this testimony for one simple reason. Pursuant to binding jurisprudence, the Court must find that Act 620 meets the purpose prong of the undue burden analysis based on the Court's finding that there is medical uncertainty as to the health benefits of the legislation. *See infra* Parts XI–XII.

[40] The Court forgoes a detailed discussion of this evidence since, under Fifth Circuit law, Act 620 would fail the purpose prong of the undue burden test only if Act 620 "serve[s] *no* purpose *other than* to make abortions more difficult." *Cole*, 790 F.3d at 586 (emphasis added) (quoting *Casey*, 505 U.S. at 900–01). Since the Court has found that one purpose of the Act is to promote the health and safety of women seeking an abortion, it need go no further.

[41] Plaintiffs and Defendant presented conflicting expert testimony on this issue. It is unnecessary to resolve this conflicting testimony since, under Fifth Circuit jurisprudence, the Court must find that Act 620 meets the purpose prong of the undue burden analysis given the evidence showing medical uncertainty on the merits of the legislation. *See infra* Parts XI–XII.

[42] The Court was impressed with the expertise and credibility of Plaintiffs' experts, Estes and Pressman, most especially Pressman. However, the Court foregoes a detailed discussion of the testimony since, under Fifth Circuit jurisprudence, the Court must find that Act 620 meets the purpose prong of the undue burden analysis given the evidence showing medical uncertainty on the merits of the legislation. *See infra* Parts XI–XII.

fall harder on these women than those who are not poor and cause a large number of these women to either not get an abortion, perform the abortions themselves, or have someone who is not properly trained and licensed perform it. (*See, e.g.*, JX 124 at 2480; Doc. 191 at 190–91; Doc. 190 at 34.)

(F) The medical benefits which would flow from Act 620 are minimal and are outweighed by the burdens which would flow from this legislation.[43]

179. The relevance and weight of these factual findings in the context of the prevailing Fifth Circuit test is discussed in more detail in this Ruling's final substantive sections. *See infra* Parts X–XI.

VIII. Efforts of Doctors to Comply With Act 620 and the Results of Those Efforts

A. Doe 1

180. For over a year prior to his trial testimony on June 24, 2015, Doe 1 has been trying, in various ways, to gain active admitting privileges at a hospital within 30 miles of Hope where he performs abortions and thereby comply with Act 620. (Doc. 192 at 42–44.)

181. The Court finds that Doe 1 is a well qualified physician and a credible witness. (*See, e.g.*, Doc. 192 at 7–14; JX 111 ¶ 1; 116 ¶ 5.)

182. The Court finds that despite his good faith efforts to comply with Act 620, Doe 1 has failed to get active admitting privileges at five different hospitals for reasons unrelated to his

[43] The burdens which would flow from Act 620 are discussed in more detail below. *See infra* Part IX. The Court forgoes a discussion weighing these burdens against the benefits of the Act since such a weighing is not legally relevant under Fifth Circuit jurisprudence. *See infra* Parts XI–XII.

competence. (*See, e.g.*, JX 116 ¶ 27.)

183. Doe 1 has attempted to get privileges at five separate nearby hospitals and, despite his efforts and his qualifications, has not been given active admitting privileges at any of these hospitals, including University Health, Minden, North Caddo Regional ("North Caddo"), Christus, and Willis-Knighton. (*See, e.g.*, Doc. 192 at 47–51.)

184. Doe 1 contacted the director of the Family Medicine Department at University Health in Shreveport where he had done his residency in family medicine. Doe 1 was initially told that he would be offered a job as a faculty member teaching sports medicine which would "take care of the admitting privileges thing." Doe 1 was told that the application forms for admitting privileges would be forwarded to him. (*Id.* at 45; *see also* JX 186 ¶ 7.)

185. When Doe did not get the application forms and inquired, he was told by the director of the department that he would not be offered a position because "there was some objection from certain staff about [Doe 1] coming to work there because of where [he] work[ed], at Hope Medical." (Doc. 192 at 44–45; *see also* JX 186 ¶ 7.)[44]

186. The director suggested that he try with the OB/GYN Department but when that route was explored, Doe 1 was advised by email that it would be "inappropriate" to have a family medicine doctor on the OB/GYN staff. (Doc. 192 at 47.)

187. Based on these communications, Doe 1 did not file a formal application for admitting privileges to University. (*Id.*)

188. When Pittman, Hope's Administrator, made inquiries about admitting privileges to

[44] This testimony was objected to as hearsay, (Doc. 192 at 46), which objection was overruled for the reasons summarized above. *See supra* note 30.

North Caddo on behalf of Doe 1, she was told that they did not have the capacity for and could not accommodate transfers. (JX 116 ¶ 22; *see also* Doc. 192 at 49.) Therefore, Doe 1 did not file a formal application. (Doc. 192 at 49; *cf.* JX 116 ¶ 22.)

189. Doe 1 filed a formal application for privileges at Minden. (JX 50; Doc. 192 at 50–51.) Minden's Medical Staff Coordinator wrote to Doe 1 declining his application: "Since we do not have a need for a satellite primary care physician at this time, I am returning your application and check." (JX 50 at 318; *see also* Doc. 192 at 50–51).

190. While the Court, like Doe 1, does not understand the meaning of the stated reason for declining the application, it is clear that the denial of privileges is unrelated to the qualifications and competence of Doe 1. (*See* Doc. 192 at 51.)

191. Doe 1's efforts to get admitting privileges at Christus reads like a chapter in Franz Kafka's *The Trial*. (*See, e.g.*, JX 71; Doc. 192 at 52–66.)

192. Doe 1 submitted his application for courtesy privileges to Christus on July 25, 2014, on a form provided by Christus. (JX 132 at 2772; JX 116 ¶ 23; Doc. 192 at 52.) Courtesy privileges gives a physician with such privileges the ability to admit patients. (Doc. 192 at 52–53.)

193. On August 25, 2014, Christus asked for additional information, (JX 71 at 1254; *see also* Doc. 192 at 54–55), which he provided on September 17, 2014, (JX 71 at 1267; JX 133; Doc. 192 at 55–56).

194. Via a letter dated October 14, 2014, yet more information was sought from Doe 1 by Christus, (JX 71 at 1268; *see also, e.g.*, Doc. 192 at 58–59), which he supplied on October 20, 2014, (JX 71 at 1273; Doc. 192 at 59–60), and October 25, 2014, (JX 134 at 2802–03).

195. When Pittman called Christus to make an appointment for Doe 1 to get an identification badge, also a requirement of the application process, an appointment was refused because, Pittman was told, Doe 1 had submitted the wrong kind of application and that he should be submitting a "non-staff care giver" application. (Doc. 192 at 62; *cf.* JX 71 at 1268, 1270, 1276.)

196. On December 17, 2014, Doe 1 then received a letter stating that his application was incomplete because Doe 1 hadn't gotten the badge (the same badge Christus would not give him an appointment to get) and because more than 90 days had elapsed since his application was submitted, the application was "deemed withdrawn." (JX 71 at 1279; Doc 192 at 63.)

197. In a follow up conversation initiated by Doe 1 and in a subsequent email from Christus, Doe 1 was told that he needed to file an application for non-staff care giver privileges, a type of privilege that would not allow him to admit patients and therefore would not qualify as "active admitting privileges" under Act 620. (JX 190 at 3662; Doc. 192 at 63–66.)

198. While there was never a formal denial of Doe's application, Christus's delays and failure to formally act, as outlined above, constitutes a de facto denial of his application for the privileges required by Act 620.

199. Doe 1's experience was similar when he applied for courtesy privileges at Willis-Knighton beginning on June 15, 2014. (JX 53; JX 116 ¶ 27; Doc. 192 at 67–78.) These privileges would have allowed Doe 1 to admit patients. (Doc. 192 at 68–69.)

200. Because of his Board Certification in addiction medicine and because Willis-Knighton has an addiction recovery center, Doe 1 filed his application for privileges as an addiction medicine specialist. (*Id.* at 70.)

201. Doe 1's application was denied because he had not undergone a residency program in addiction medicine, despite his board certification in addiction medicine and even though there was no residency program available when he got his board certification. (JX 51 at 508; Doc. 192 at 72–73.)

202. On February 1, 2015, Doe 1 re-submitted an application, this time as a Family Practice specialist. (JX 97 at 2069–2117; Doc. 192 at 73–74.)

203. On March 11, 2015, Willis-Knighton requested information regarding documentation of "hospital admissions and management of patients 18 years old of age or older in the past 12 months." (JX 128; Doc. 192 at 75–76.)

204. On March 24, 2015, Doe 1 provided the requested information. (JX 189; Doc. 192 at 77–78.) Because of the nature of his practice, he had not admitted any patients in the last 12 months, but he did provide detailed information about his training and procedures done during that same time period. (*Id.*)

205. Despite the lapse of more than eight months since his second application and more than five months since he provided the information requested in support of that application, Willis-Knighton has neither approved nor denied his application. (*See, e.g., id.* at 78.) Under these circumstances, the Court finds that this application has been de facto denied.

B. Doe 2

206. Currently, Doe 2 performs abortions at Bossier and Causeway Clinics. (Doc. 191 at 17; JX 112 at 2216.)

207. The Court finds Doe 2 to be a well qualified and competent physician and a credible

witness. (*Id.* at 13–17; JX 112 ¶ 1; *see also infra*.)

208. Doe 2 does not currently have active admitting privileges at a hospital within 30 miles of Bossier Clinic. (Doc. 191 at 19.)

209. Doe 2 has been unsuccessful in his good faith efforts to get admitting active admitting privileges within 30 miles of the Bossier Clinic. (*See, e.g.*, Doc. 191.)

210. Doe 2 worked as an Assistant Clinical Professor of Medicine at LSU Medical School, now known as University Health, at various times for approximately 18 years total, leaving LSU in 2004. (*Id.* at 14–15.)

211. While he was on staff at University and during the years in which he engaged in a general OB/GYN practice, Doe 2 had admitting privileges at various hospitals. (*Id.* at 24, 95.)

212. When he left the University staff in 2004, Doe 2 was given consulting privileges, which allow him to consult but not to admit patients. (Doc. 191 at 23–24, 84–88; JX 79 at 1708–09; JX 185.)[45]

213. Following the passage of Act 620, Doe 2 attempted to upgrade his privileges at University to allow him to admit patients in order to comply with the requirements of the Act. (Doc. 191 at 24–25.)

214. When he spoke to Dr. Lynne Groome ("Groome"), the head of the OB/GYN Department at University, about upgrading his privileges, he was told this would not happen because of his abortion practice. (*Id.* at 25–26; *cf.* JX 116 ¶ 27.)

215. In his testimony before this Court, he thusly described his communication with

[45] While Doe 2 initially thought that these were called "courtesy privileges," he corrected his mistake on cross examination. (Doc. 191 at 23, 81–87; JX 185.)

Groome:

Q. What's your understanding of why you were not able to upgrade your privileges at LSU?

A. Well, Dr. Groome told me that he was reluctant to even consider that, because it was such a controversial topic, but he would take it to the Dean and ask, which he did and he essentially said that you're not going to go beyond your [clinical] privileges.

Q. Were you surprised by that response?

A. No.

Q. Why weren't you surprised?

A. Just because of the political nature of what I do and the controversy of what I do.

(*Id.* at 25–26.)[46]

216. During the summer of 2014, Doe 2 also applied for privileges at WKB. (*Id.* at 26–27.)

217. On August 11, 2014, the Department of OB/GYN and Pediatrics Performance Peer Review Panel ("PPRP") at WKB wrote to Doe 2 asking for additional information: "In order for the Panel to sufficiently assess your clinical competence, you will need to submit documentation, which should include operative notes and outcomes, of cases performed within the last 12 months for the specific procedures you are requesting on the privilege request form." (JX 144 at 3445–46; *see also, e.g.*, Doc. 191 at 29.)

[46] This testimony was objected to as hearsay. (Doc. 191 at 25.) For the same reasons summarized above, *see supra* note 30, the objection was overruled.

218. After Doe 2 made information regarding his prior outpatient operations available to WKB, (Doc. 191 at 30), he received another letter from WKB dated November 19, 2014, stating in pertinent part:

> The data [you] submitted supports the outpatient procedures you perform, but does not support your request for hospital privileges. In order for the panel to evaluate and make recommendations for hospital privileges [,] they must evaluate patient admissions and management, consultations and procedures performed. Without this information your application remains incomplete and cannot be processed.

(JX 89 at 1950; *see also* Doc. 191 at 30–31.)

219. Because of the nature of his non-hospital based practice, Doe 2 was and is unable to provide the requested information. (*See, e.g.*, Doc. 191 at 29–31.) Thus, while Defendant is correct in arguing that Doe 2's application has not been formally denied, (Doc. 201 at 11), Doe 2's application cannot and will never be approved according to WKP's own letter, (JX 89; *see also, e.g.*, JX 144 at 3445–46).

220. As explained by Doe 2, "You know, they haven't formally denied me. . . . I'm in a Catch-22 basically. I can't provide information I don't have." (Doc. 191 at 79–80.)

221. This situation mirrors Doe 1's experience with three other Willis-Knighton-branded entities. Specifically, the Court also notes that although Doe 1, in response to a similar letter from WK Medical Center, WK South, and WK Pierremont, (JX 128), formally responded showing he had not had any hospital admissions in the last 12 months, (JX 189 at 3579; Doc. 192 at 77–78), WK still has not denied or approved his application, (Doc. 192 at 78).

222. The Court finds that, under these circumstances, Doe 2's inability to gain privileges at WKB are unrelated to his competence and that his application to WKB has been de facto

denied.

223. While Defendant argues that Willis-Knighton's inaction is related to Dr. Doe 2's competence because, due to the nature of his practice, he cannot demonstrate "current clinical competence" (Doc. 201 at 11), the Court is not persuaded. The reality is different. Doe 2, a Board Certified OB/GYN who spent many years as an Assistant Clinical Professor at LSU Medical School and who, by Willis-Knighton's admission, has demonstrated his ability regarding outpatient surgeries, is in what he correctly describes a "Catch-22" created by a combination of the Act's requirement and the nature of his practice as an abortion provider.

224. Because Doe 2 also practices at Causeway Clinic in Metairie, he applied for admitting privileges at Tulane, within 30 miles of Causeway. (*See, e.g.*, Doc. 191 at 32–35, 230; JC 180.)

225. While Defendant has argued that the admitting privileges requirement is only about insuring competency of doctors who perform abortions and the process of gaining admitting privileges is neutral and devoid of considerations of the political, religous and social hostility against abortion, the email exchanges between Doe 2 and Dr. A at Tulane demonstrate a very different reality, even in a metropolitan, university-based hospital. (JX 169–78;[47] *see also* Doc. 191 at 49–54.)

226. In this exchange, Dr. A first feels the need to discuss Doe 2's request for privileges "with our lobbyists." (JX 169.) Because Doe 2 is a "low/no provider" in hospitals in the New Orleans area, Dr. A states: "This is truly a rock and a hard place." (JX 172.) When Doe 2 expresses frustration with the lack of success in the application process, Dr. A states: "This is just

[47] These exhibits, being jointly submitted, were admitted into evidence. (Doc. 191 at 54.)

ridiculous. I can't believe the state has come to this." (JX 174; *cf.* JX 170.) Dr. A continues: "I am working on an approach where you would get admitting privileges only for your patients . . . ." (JX 175.) When a proposed solution is found and Doe 2 expresses doubt that this will meet the requirements of the law, Dr. A responds: "Technically, you will have admitting privileges. Isn't that what the law says?" (JX 177). When discussing the need for a covering physician, Dr. A clarifies some of the problems surrounding Doe 2's application: "There were a few faculty who were not comfortable with covering; they were also concerned that 'Tulane as back up for an abortion clinic might not help our referrals.' Given this concern, Dr. B will cover for you formally." (JX 178.)

227. When privileges were finally granted by Tulane, Doe 2 was notified by Dr. A that the proposed privileges would have "the following limitations: 'Admissions of patients from the physician's clinical practice with complications of first and second trimester abortions with referral of those patients to an attending physician on the Tulane staff credentialed for OB/Gyn privileges who has agreed to provide for such care for the physician's patients.'" (JX 181; *see also* Doc. 191 at 57, 60–61.)

228. Consistent with this email, Tulane's formal grant circumscribed Doe 2's privileges in these terms: "Admission of patients from the physician's clinical practice . . . with referral of those patients to an attending physician on staff at [Tulane Medical Center] credentialed for Ob/Gyn privileges who has agreed to provide care for the physician's patients at TMS." (JX 183 at 3652–3; *see also* Doc. 191 at 33, 55–58.)

229. The Parties disagree as to whether these admitting privileges qualify as "active admitting privileges" within the meaning of Act 620. (*Compare* Doc. 200 at 46–47, *with* Doc. 196

at 19–20.)

230. Defendant has filed an affidavit in which she states that the admitting privileges granted to Dr. Doe 2 by Tulane "are sufficient to comply with the Act." (JX 191 at 3668; *see also* Doc. 196 at 20; Doc. 200 at 48.)

231. Plaintiffs argue:

> Although Secretary Kliebert has taken the position that Dr. John Doe 2's privileges at Tulane satisfy Act 620, Dr. John Doe 2 has concerns that her position is inconsistent with the plain language of the Act, which requires that 'the physician is a member in good standing of the medical staff of a hospital . . . with the ability to admit a patient and to provide diagnostic and surgical services to such patient.' . . . Based on Tulane's letters, Dr. John Doe 2 cannot provide diagnostic and surgical services to patients admitted to Tulane as required by the plain language of the statute.

(Doc. 196 ¶ 47 at 20 (citing to Doc. 193 at 123; Doc. 191 at 38–40).)

232. Plaintiff further argues:

> Dr. John Doe 2 has concerns that the position Secretary Kliebert has taken regarding his privileges at Tulane during the course of this litigation may change at a later date. As a result, he will not risk his medical license by performing abortions in Metairie if Act 620 is allowed to take effect.

(*Id.* ¶ 48 at 20 (citing Doc. 191 at 38–40; JX 191).)

233. Defendant makes two counters:

> Plaintiffs' 'concerns' about the Defendant's determination that Dr. Doe 2's privileges at Tulane satisfy the Act are legally irrelevant, because Defendant is the state official charged with interpretation and enforcement of the Act. Furthermore, Plaintiffs' assertions regarding the nature of Dr. Doe 2's privileges at Tulane Medical Center are clearly wrong because they are contradicted by the overwhelming weight of the evidence.

(Doc. 201 ¶ 47 at 12.)

234. Defendant further argues:

> Plaintiffs' 'concerns' that the Defendant's determination that Dr. Doe 2's Tulane privileges satisfy the Act "may change at a later date" are legally irrelevant. Plaintiffs have produced no evidence indicating that any such "change" in position by Defendant with respect to Dr. Doe 2's Tulane privileges is likely to occur. The evidence therefore does not show that the Act or the Defendant pose any credible, concrete threat to Dr. Doe 2's ability to continue his practice at Causeway clinic. If Dr. Doe 2 voluntarily ceases to perform abortions at Causeway because of his fears that the Defendant (or some future Secretary) will change her position, that cessation would be attributable to Dr. Doe 2 alone and not to the Act itself.

(*Id.* ¶ 48 at 12.)

235. In light of Defendant's argument, so as to resolve this dispute and determine whether Doe 2 has "active admitting privileges" at Tulane, the Court must first determine whether it is bound by the interpretation given by Defendant and, if not, compare the privileges granted by Tulane with Act 620's definition of "active admitting privileges."

236. Whatever discretion the Secretary may have in a law's enforcement, no deference is owed to an opinion contrary to the law's unambiguous and plain meaning. *See, e.g.*, *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2442, 189 L. Ed. 2d 372 (2014) (observing that "an agency interpretation that is inconsisten[t] with the design and structure of the statute as a whole . . . does not merit deference" (alteration in original) (citations omitted) (internal quotation marks omitted)); *Talk Am., Inc. v. Mich. Bell Tel. Co.*, 564 U.S. 50, 131 S. Ct. 2254, 2260–61, 180 L. E.d 2d 96 (2011) (reaffirming the interpretive principle that only "[i]n the absence of any unambiguous statute or regulation" does a court turn to an agency's interpretation"); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808 (1997) (emphasizing that a court's inquiry "must cease if the statutory language is unambiguous and the statutory scheme is

coherent and consistent" and explaining that"[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" (internal quotation marks omitted)). Quite simply, if the legislative intent is clear, as evidenced by the use of an unambiguous word, "that is the end of the matter; for the court, as well as the agency, must give effect to th[at] unambiguously expressed intent." *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842–43, 104 S. Ct. 2778, 2781, 81 L. Ed. 2d 694 (1984) ("*Chevron*"); *see also Miss. Poultry Ass'n v. Madigan*, 992 F.2d 1359, 1363 (5th Cir. 1993) (quoting *id.*).

237. If the relevant statute is ambiguous, however, at least some deference is owed. *See Nat'l Cable & Telecommc'ns Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980, 125 S. Ct. 2688, 2699, 162 L. Ed. 2d 820 (2005). But such deference is only accorded if the statute is truly "ambiguous" regarding the precise "question at issue" and if the agency's interpretation is a "reasonable" and hence "permissible construction of the statute" at hand. *Orellana-Monson v. Holder*, 685 F.3d 511, 517 (5th Cir. 2012); *see also, e.g., Siew v. Holder*, 742 F.3d 603, 607 n.27 (5th Cir. 2014) (citing *id.*); *United States v. Baptiste*, 34 F. Supp. 3d 662, 670 (W.D. Tex. 2014) (same). Thus, even if the pertinent statute is ambiguous, an agency's interpretation may be denied "controlling weight" if "arbitrary, capricious, or manifestly contrary to the statute." *Rodriguez-Avalos v. Holder*, 788 F.3d 444, 449 (5th Cir. 2015) (quoting *Orellana-Monson*, 685 F.3d at 517).

238. Critically, as federal courts are bound to "interpret a state statute as that state's courts would construe it," *Newman*, 305 F.3d at 696, the same type of measured deference is afforded to agency interpretations by this state's courts. *Compare Silva-Trevino v. Holder*, 742 F.3d 197, 199–200 (5th Cir. 2014), *with Zeringue v. State Dep't of Public Safety*, 467 So. 2d 1358, 1361

(La. Ct. App. 1985). Like their federal counterparts, Louisiana state agencies are "entitled to deference regarding . . . interpretation and construction of the rules and regulations that . . . [they] promulgate[]." *Women's & Children's Hosp. v. State*, 2007 1157 (La. App. 1 Cir. 02/08/08); 984 So. 2d 760, 768–69; *see also Oakville Cmty. Action Grp. v. La. Dep't of Envtl. Quality*, 2005 1365 (La. App. 1 Cir. 5/5/06); 935 So. 2d 175, 186 (La. Ct. App. 2006) ("A state agency is charged with interpreting its own rules and regulations and great deference must be given to the agency's interpretation.")

239. However, as with *Chevron*, the statute itself must be ambiguous for such respect to be accorded. *Clark v. Bd. of Comm'rs*, 422 So. 2d 247, 251 (La. Ct. App. 1982) ("[A]lthough an agency's interpretation of a statute under which it operates is entitled to some deference, such deference is constrained by the court's obligation to honor the clear meaning of a statute, as revealed by its language, purpose and history."); *cf. Comm-Care Corp. v. Bishop*, 96-1711 (La. 07/01/97); 696 So. 2d 969, 973 ("The meaning and intent of a law is to be determined by consideration of the law in its entirety and all other laws on the same subject matter, and a construction should be placed on the provision in question which is consistent with the express terms of the law and with the obvious intent of the lawmaker in enacting it.").

240. Moreover, again as with a federal statute, "agency[] interpretations" lose any persuasive value, forfeiting any right to judicial deference, if "arbitrary, capricious or manifestly contrary to its rules and regulation." *In re Recovery I*, 93-0441 (La. App. 1 Cir. 04/08/94); 635 So. 2d 690, 696; *see also, e.g., Doctors Hosp. of Augusta v. Dep't of Health & Hosps.*, 2013 1762 (La. App. 1 Cir. 09/17/14); 2014 La. App. Unpub. LEXIS 481, at *19–20, 2014 WL 4658202, at *7 (refusing to accord any deference to an interpretation by the same agency here, deeming it "an

abuse of discretion" that effectively rewrote the relevant statute); *Bowers v. Firefighters' Ret. Sys.*, 2008-1268 (La. 03/17/09); 6 So. 3d 173, 176 ("Under the arbitrary and capricious standard, an agency decision is entitled to deference in its interpretation of its own rules and regulations; however, ***it is not entitled to deference in its interpretation of statutes*** and judicial decisions." (emphasis added)).

241. The Court finds that Defendant's interpretation of Act 620 is contradicted by its plain language. Expressly and unambiguously, the statute defines "active admitting privileges" to include "the ability to admit a patient and to provide diagnostic and surgical services to such patient consistent with the requirements of Paragraph (A)(1) of this Subsection [requiring a physician performing abortions to be licensed and have completed or be enrolled in an OB/GYN or family residency program]." LA. R.S. § 40:1299.35.2A(2)(a).[48]

242. Because the validity of Defendant's interpretation arose during trial, the Court asked the following question to Marier, Defendant's expert witness, a physician who helped draft Act 620, (Doc. 193 at 94): "And I understood you to say that the doctor, in order to meet Act 620 would have to - - would not have to be able to perform all diagnostic and surgical services, but *would have to perform some diagnostic and surgical services*. Did I understand that correctly?" (Doc. 193 at 123 (emphasis added).) To this question, Marier answered: "Yes. Yes, Your Honor." (*Id.*)

243. Because Doe 2's privileges are limited to "admission of patients" with the obligation to refer his patient to a "Tulane staff Ob/Gyn" for surgery and other kinds of treatment as well as

[48] As already noted, *see supra* note 2, the text of Act 620 can be found in a joint exhibit. (JX 115.)

diagnostic services, this arrangement does not allow Doe 2 to perform any (let alone "some") diagnostic, surgical or other kinds of treatment himself. Regardless of that fact that Tulane has chosen to label him an "admitting physician," (JX 184), he cannot "provide diagnostic and surgical services," and Act 620 expressly defines "active admitting privileges" as encompassing the ability to do so, LA. R.S. § 40:1299.35.2A(2)(a). Hence, Doe 2's privileges do not and cannot meet the plain language of Act 620.

244. Here, as Defendant's own expert testified and as the statute's plain meaning makes clear, the Secretary's interpretation flies in the face of the law's basic text. The words are clear, their meaning patent, and, under these circumstances, the Defendant's interpretation is not entitled to deference. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60 (1803); *see, e.g.*, *Harrah's Bossier City Inv. Co., LLC v. Bridges*, 2009-1916 (La. 05/11/10); 41 So. 3d 438, 449 ("Although courts may give due consideration to the administrative construction of a law, we are certainly not bound by them."); *Salazar-Regino v. Rominski*, 415 F.3d 436, 448 (5th Cir. 2005) (citing this maxim in the context of weighing the reasonableness of an agency's particular interpretation); *Sexton v. Panel Processing, Inc.*, 754 F.3d 332, 336 (6th Cir. 2014) (rejecting an agency interpretation as contrary to the statutory language as interpreted).

245. The Court also notes that the Defendant's interpretation allowing (and, in the case of Dr. Doe 2 and Tulane, requiring) the abortion provider to turn over the actual care of the patient to another doctor, flies in the face of one of Act 620's main purposes and purported medical benefits: "continuity of care," the ability of a the abortion provider to *treat* his patient in the

hospital if admission to the hospital is necessary. (*See, e.g.*, Doc. 193 at 21–23; Doc. 200 ¶¶ 91 at 98–101.)

246. While Defendant is correct that Secretary Kliebert is the person charged with enforcing this provision, it is also true that the Secretary of DHH often changes every few years.[49] (Doc. 191 at 198–99, 195–96.)

247. It is also true that the new Secretary may disagree with her predecessor and reverse course on her current interpretation of Act 620.[50]

248. The Court finds that Doe 2 has legitimate concerns about relying on the declaration of Defendant to practice as an abortion provider if Act 620 were to go into effect.

249. More importantly, the Court finds that Doe 2 does not have active admitting privileges within the meaning of Act 620 at a hospital within 30 miles of Causeway Clinic.

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[49] Indeed, in the wake of the recent gubernatorial election, Doctor Rebekah Gee has become DHH's new head.

[50] At the time, Kliebert did not even say she will bind herself to this interpretation during her time in office. While not directly relevant to this matter, the Court notes that in a recent case, this same agency has submitted multiple inconsistent declarations and abruptly changed legal positions without much explanation. *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, No. 15-cv-00565-JWD-SCR, 2015 WL 6551836, at *8–9, *33, 2015 U.S. Dist. LEXIS 146988, at *27–29, *109–10 (M.D. La. Oct. 29, 2015). Though these inconsistencies do not appear in this case, this Court may take judicial notice of its own public docket. FED. R. EVID. 201; *see, e.g.*, *EduMoz, LLC v. Republic of Mozambique*, 968 F. Supp. 2d 1041, 1049 (C.D. Cal. 2013); *Richardson v. Monaco (In re Summit Metals, Inc.)*, 477 B.R. 484, 488 n.1 (Bankr. D. Del. 2012); *LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.)*, 196 F.3d 1, 8 (1st Cir. 1999).

C. Doe 3

250. Doe 3 currently has admitting privileges at the WKB and Christus, both of which are within 30 miles of Hope Clinic where he performs abortions. (Doc. 190 at 21–22, 120, 148–49; JX 188 ¶ 6; JX 116 ¶ 18.)

251. The Court finds that Doe 3 is a well qualified physician and a credible witness. (*See, e.g.*, JX 188 ¶ 1; Doc. 190 at 109–11.)

252. Doe 3's current privileges at Christus require him to admit approximately 50 patients per year. (Doc. 190 at 150–52; JX 59.)

253. Doe 3 has had admitting privileges at Christus since the 1990's and at WKB since late 1997 or early 1998. (Doc. 190 at 120–21.)

254. Doe 3 uses his admitting privileges primarily in connection with his busy obstetrics practice delivering babies and, to a lesser extent to his private practice in gynecology, not because of his work at Hope Clinic. (*Id.* at 124, 147; *see also* JX 188 ¶ 7.)

255. As a result of his fears of violence and harassment, Doe 3 has credibly testified that if he is the last physician performing abortion in either the entire state or in the northern part of the state, he will not continue to perform abortions. (Doc. 190 at 174–76; *see also, e.g.*, JX 188 ¶¶ 10–11.)

D. Doe 4

256. Doe 4 performs abortions only at Causeway in Metairie. (*See, e.g.*, JX 114 ¶ 1; Doc. 168-5 at 8.)

257. He does not currently have admitting privileges at a hospital within 30 miles of that clinic. (Doc. 191 at 18.)

258. Doe 4 testified by deposition, (Doc. 168-5), and so the Court did not have the opportunity to directly measure his demeanor. However, the Court finds that Doe 4 is a well qualified physician, (*See, e.g.*, JX 114 ¶ 1; Doc. 168-5 at 5–6, 9, 12), and that his testimony is credible and consistent with the other testifying doctors who perform abortions.

259. On August 6, 2014, Dr. John Doe 4 applied for admitting privileges at Ochsner-Kenner Medical Center ("Ochsner"). (JX 57 at 762–808; *see also* Doc. 168-5 at 16–17.)

260. Doe 4 chose to apply to Ochsner because he knew a physician there who agreed to provide coverage for him. (Doc. 168-5 at 17.) Ochsner was the only hospital where Doe 4 knew a physician who would cover for him and who met the hospital's criteria to be a covering physician. (*Id.* at 85, 109–10.)

261. Ochsner requested additional information, which Doe 4 provided, (JX 98 at 2118; Doc. 121 at 3–4; JX 60 at 824), but he has not received a response at this time. (Doc. 168-5 at 17.)

262. Doe 4 did not apply for admitting privileges at Touro Infirmary or LSU New Orleans because both hospitals required Doe 4 to find an OB/GYN to cover for him, which Doe 4 has been unable to do. (*Id.* at 23.)

263. The Court finds that, despite a good faith effort to gain admitting privileges at a hospital within 30 miles of where he performs abortions, and given the fact that it has been well over a year since he applied for privileges with no response, the Court finds that Doe 4's inability to meet the requirements of Act 620 is unrelated to his competence and his request for privileges has been de facto denied.

E. Doe 5

264. Doe 5 performs abortions at two facilities: Woman Health's in New Orleans and Delta in Baton Rouge. (*See, e.g.*, Doc. 168-6 at 4; JX 109 ¶ 7.)

265. Like Doe 4, Doe 5 testified by deposition, and this Court hence did not have the opportunity to directly measure his demeanor. However, in reviewing his deposition and related documentation, (*See, e.g.*, Doc. 168-6; JX 109), the Court finds the testimony to be credible and consistent with the other testifying doctors who perform abortions.

266. The Court finds that Doe 5 has active admitting privileges at Hospital C, a hospital within 30 miles of the Women's Clinic in New Orleans, but that he has been unable to get admitting privileges within 30 miles of Delta. (*See, e.g.*, JX 109 ¶ 32–5.)

267. On July 24, 2014, Doe 5 received admitting privileges at Hospital C, which is within 30 miles of Women's Clinic where he performs abortions. (Doc. 168-4 at 25–26; Doc. 168-6 at 11; JX 109 ¶ 34.)

268. The Parties have stipulated that Doe 5's privileges at Hospital C are "active admitting privileges" as defined in Act 620. (Doc. 176; Doc. 168-4 at 26; Doc. 168-6 at 11–13.)

269. Doe 5 does not currently have admitting privileges at a hospital within 30 miles of Delta in Baton Rouge. (*See, e.g.*, Doc. 168-6 at 22; JX 109 ¶ 23.)

270. Doe 5 has applied for admitting privileges at three hospitals in the Baton Rouge area: Woman's Hospital in April or May of 2014 and Lane Regional Medical Center and Baton Rouge General Medical Center in July of 2014. (Doc. 168-6 at 11; JX 109 ¶¶ 32–33.)

271. Doe 5 has been unable to find a local physician who is willing to provide coverage for him when he is not in Baton Rouge, which all three hospitals require. (JX 109 ¶¶ 32–33; Doc. 51; Doc. 168-6 at 11–12.)

272. The Court finds that Doe 5, despite good faith efforts to meet the requirements of Act 620, has been unable to do so in the Baton Rouge area for a period of well over a year for reasons unrelated to his competence. Under these circumstances, while his applications have not been finally acted upon and are therefore technically "pending," the Court finds that they have been de facto denied.

F. Doe 6

273. Doe 6 is a Board Certified OB/GYN with 48 years of experience who is the Medical Director of Woman's Clinic in New Orleans and Delta Clinic in Baton Rouge. (JX 168 ¶ 1; *see also* JX 109 ¶ 8.)

274. Doe 6 provided his testimony by declaration, (JX 168), and so the Court did not have the opportunity to directly measure his demeanor. However, in reviewing his Declaration, the Court finds the testimony to be credible and consistent with the other testifying doctors who perform abortions in Louisiana.

275. While Doe 6 is Medical Director at both Women's and Delta, "[d]ue to [his] age and the demands of traveling back and forth between New Orleans and Baton Rouge, along with [his] private gynecology practice in New Orleans, [he is] no longer able to provide abortion[s] in Baton Rouge." (JX 168 ¶ 3; *see also* JX 109 ¶ 8.)

276. As a result, Doe 6 ceased performing abortions at Delta in Baton Rouge in April of 2012, leaving only Doe 5 performing abortions at that facility. (JX 168 ¶ 3; *see also* JX 109 ¶ 9.)

277. Doe 6 does not currently have admitting privileges at a hospital within 30 miles of Women's Clinic or Delta Clinic. (JX 168 ¶¶ 15, 21.)

278. From approximately 1973 to 2005, when he had an OB/GYN practice, Doe 6 had admitting privileges at various hospitals in New Orleans. (*Id.* ¶ 13.) As his private practice became solely a gynecology practice, and due to the low rate of abortion complications, he was unable to meet the hospitals' requirements to admit a minimum number of patients each year. (*Id.*) Doe 6 also did not need admitting privileges because he was not admitting patients to the hospital. (*Id.*) Consequently, when his admitting privileges expired, he did not apply to renew them. (*Id.*)

279. Doe 6 contacted Tulane about the possibility of obtaining admitting privileges and was told not to bother applying because he would not be granted privileges, as he had not had admitting privileges at any hospital since 2005. (JX 168 ¶ 12.)[51] Defendant argues that this testimony is inconsistent with that of Doe 2, who was able to get courtesy privileges at Tulane. (Doc. 201 at 14.) Especially given Doe 6's age and other differences in the professional circumstances of these two doctors, (*Compare* JX ¶ 8, *and* JX 168 ¶ 13, *with* Doc. 191 at 14–16, 22–23), this assertion is not supported and unpersuasive. In addition, Doe 6's limited privileges, like Doe 2's, do not meet the requirements of Act 620, read and construed as enacted. (*See supra* Part VIII.)

[51] While Defendant argues that this testimony is hearsay, (Doc. 201 at 14), Defendant did not make this objection prior to or at trial. Even if the objection would have been made, it would have been overruled for the same reasons as her other similar objections. *See supra* note 30.

280. Prior to September 1, 2014, Doe 6 applied for admitting privileges at East Jefferson Hospital in New Orleans, which is within 30 miles of Women's Clinic. (JX 109 ¶¶ 31–33; JX 168 ¶ 15.) On September 17, 2014, East Jefferson requested additional information, which he then provided. (Doc. 51 at 2.) Since that time, no action has been taken. (*Id.*; *see also, e.g.*, JX 168 ¶ 15.) That application, now pending for over a year, is considered by the Court to have been de facto denied.

281. Doe 6 testified that he did not apply to other hospitals within 30 miles of Women's Clinic because, due to the nature of his practice as an abortion provider, he did not admit a sufficient number of patients to receive active admitting privileges. (JX 168 ¶ 11.)

G. Post-Hearing Updates

282. On September 17, 2015, the Court requested that Plaintiffs update the Court on or before September 24, 2015, on the status of the admitting privileges of the doctors and, if there were any changes, to provide the details of same. (Doc. 206.)

283. By letter of September 25, 2015, the Plaintiffs informed the Court and Defendants that, after making inquiries, they were unaware of any material changes in the status of the applications of Does 1–6. (Doc. 209.)

284. At a telephone status conference of September 28, 2015, this letter was received into evidence without objection as JX 193. (Doc. 210.)

IX. Effects of Act 620

A. The Effect of Act 620 on Does 1-6

285. The number and location of doctors and clinics providing abortions varies widely from state to state. The effect of an admitting privileges requirement on those providers and the concomitant effect on women's right to an abortion has also varied state to state.[52]

286. Before the passage of Act 620, doctors performing abortions in Louisiana were not required to and, for their practices, did not need to have admitting privileges at any hospital, let alone a nearby hospital, in order to safely provide services for their patients. (Doc. 190 at 25, 36–37, 39, 127, 197–98; Doc. 191 at 46; Doc. 195 at 32; JX 135 at 2804; JX 110 ¶ 7; JX 168 ¶ 8.)

287. As summarized above, at the time Act 620 was passed, only one of the six doctors performing abortions, Doe 3, had admitting privileges at a hospital and he maintained these admitting privileges for years in order to facilitate his general OB/GYN practice which was and is unrelated to that portion of his practice performing abortions at Hope.

288. Since the passage of Act 620, all five remaining doctors have attempted in good faith to comply with Act 620. All five have attempted to get admitting privileges at a hospital within 30 miles of where they perform abortions. All five have made formal applications to at least one nearby hospital and three of the five doctors have filed applications at multiple hospitals within thirty miles.

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[52] *Compare, e.g., Jackson Women's Health v. Currier*, 760 F.3d 448 (5th Cir. 2014) ("*Currier*") (where the admitting privileges statute was found to place an undue burden on the constitutionally protected right to an abortion), *petition for cert. filed*, No. 14-997 (filed February 19, 2015), *with Cole*, 790 F.3d at 563 (where, at least as to the facial challenge, the plaintiffs were found to have failed to establish a constitutional violation).

289. Two of the doctors, Does 2 and 5, perform abortions in two separate cities and thus, each had to apply at hospitals in two different locales.

290. Based on a careful review of the evidence, the Court finds that, notwithstanding the good faith efforts of Does 1, 2, 4, 5 and 6 to comply with the Act by getting active admitting privileges at a hospital within 30 miles of where they perform abortions, they have had very limited success for reasons related to Act 620 and not related to their competence.

291. The five doctors have filed thirteen separate formal applications at nearby hospitals. In only one of those cases–Doe 5 at Hospital C[53]–were active admitting privileges granted. In another case, that of Doe 2 at Tulane, he was given admitting privileges that do not comport with the plain language of Act 620.

292. Of the thirteen formal applications filed, only one has been frankly denied, the application of Doe 1 at Minden.

293. The remaining ten applications have never been finally acted upon because the doctor applying, given the nature of his practice as an abortion provider, either cannot provide the information required or the information has been provided and the application remains in limbo for undisclosed reasons. In almost every instance, more than a year has passed since the original applications were filed.[54]

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[53] It is noteworthy that Hospital C, a hospital in a major metropolitan area and not a party to this action, is so concerned about the ramifications of having its identity publically revealed, that it requested that it be named only through a pseudonym and, with the consent of all the Parties, this was allowed. *See supra* Part V.E.

[54] As of September 25, 2015, the status of "pending" applications is unchanged. (Doc. 209.)

294. Defendant argues that where these applications are "pending," the applications have not been denied and therefore Plaintiffs have failed to prove that Act 620 has caused the failure of these doctors to get admitting privileges.

295. The Court disagrees. Because Louisiana has no statutorily prescribed time limit within which a hospital must act on a physician's application, *see supra* Part V.D, a hospital can effectively deny the application by simply not acting upon it. Given the length of time involved in these applications, the Court finds that this is precisely what has occurred here.

296. Doe 3 has been threatened as a result of his work at Hope Clinic. (*See, e.g.*, JX 113 ¶ 3.) Last year, anti-abortion activists from outside Louisiana left fliers on neighbors' mailboxes calling him an abortionist and saying they wanted to convert him to Jesus. (Doc. 190 at 108–09; *see also* JX 113 ¶ 3.)

297. These individuals also approached Doe 3's regular medical practice patients as they tried to enter his office, requiring the building security officers to escort the activists off the premises. (Doc. 190 at 109; *see also* JX 113 ¶ 3.) These individuals told Doe 3's patients that he killed babies and that they should not see him. (Doc. 190 at 109.)

298. Doe 3, the only abortion doctor who had privileges at the time Act 620 was passed, (*See, e.g.*, JX 116 ¶ 18), fears that, if the other Louisiana abortion providers are not able to obtain admitting privileges, he will become an even greater target for anti-abortion violence. (*See, e.g.*, JX 113 ¶¶ 3–7.) He specifically testified that "all [these individuals] have to do is eliminate [him] as they have Dr. Tiller and some of the other abortion providers around the country" to eliminate abortion entirely in Northern Louisiana. (Doc. 190 at 174–75.)

299. Doe 3 is also concerned that such individuals could "cause a lot of other . . . problems that would affect [his] ability to perform the rest of [his] practice." (*Id.* at 174–75; *cf.* JX 113 ¶ 8.)

300. Doe 3 has difficulty arranging coverage for his OB/GYN practice because other OB/GYN doctors in the Shreveport area refuse to cover his practice as a result of his work at Hope Clinic performing abortions. (Doc. 190 at 111–13.)

301. Dr. Doe 3 testified that, as a result of his fears, and the demands of his private OB/GYN practice, if he is the last physician performing abortion in either the entire state or in the northern part of the state, he will not continue to perform abortions. (*Id.* at 174–76; *see also* JX 116 ¶ 19.) The Court finds his testimony credible and supported by the weight of other evidence in the record.[55]

302. To summarize,

- If Act 620 takes effect, Doe 1 will no longer be allowed to provide abortions in Louisiana because he does not have admitting privileges pursuant to the Act within 30 miles of Hope.
- If Act 620 takes effect, Doe 2 will no longer be allowed to provide abortions in Louisiana, because he does not have active admitting privileges pursuant to the Act within 30 miles of Bossier. His privileges at Tulane are limited such that they do not comply with Act 620 so that he does not have active admitting privileges within 30 miles of Causeway Clinic.

[55] The issue of whether this fact is legally relevant to the undue burden analysis is discussed in this Ruling's Conclusions of Law. *See infra* Parts XI–XII.

- If Act 620 takes effect, Doe 3, who does have admitting privileges pursuant to the Act within 30 miles of Hope, will no longer provide abortions in Louisiana because of well-founded concern for his personal safety.[56]
- If Act 620 takes effect, Doe 4 will no longer be allowed to provide abortions in Louisiana because he does not have admitting privileges pursuant to the Act within 30 miles of Causeway.
- If Act 620 takes effect, Doe 5 will be able to provide abortions at Women's Clinic, in New Orleans, where he has admitting privileges pursuant to the Act but, in all likelihood, Doe 5 will be the only physician available to provide abortion care in all of Louisiana.
- However, Doe 5 will not be able to provide abortions at Delta in Baton Rouge because he does not have admitting privileges pursuant to the Act within 30 miles of Delta and, despite good faith efforts to get same, has been unable to do so.
- If Act 620 takes effect, Doe 6 will no longer be allowed to provide abortions in Louisiana because he does not have admitting privileges pursuant to the Act within 30 miles of Women's Clinic.

303. The Court finds that the inability of Does 1, 4 and 6 to get active admitting privileges at any hospital is directly related to the requirements of Act 620 as they apply in concert with existing Louisiana law and the Louisiana rules and practices for getting admitting privileges.

304. The Court finds that the inability of Doe 2 to get active admitting privileges within 30 miles of Bossier and only limited privileges (not "active admitting privileges") within 30 miles

[56] *Id.*

of Causeway as well as Doe 5's inability to get active admitting privileges within 30 miles of the Delta are also directly attributable to the requirements of Act 620 as they apply in concert with the rules and practices for getting admitting privileges in Louisiana.

B. The Effect of Act 620 on the Clinics and Women of Louisiana

305. If Act 620 were to be enforced, four of the six doctors–Doe 1, 2, 4, and 6–would not meet the requirements of Act 620. If Doe 3 quits the abortion practice, as he has testified he will, Louisiana would be left with one provider and one clinic. As is analyzed in more detail below, this would result in a substantial number of Louisiana women being denied access to an abortion in this state.[57]

306. If Act 620 were to be enforced, four of the five clinics–Hope, Bossier, Delta, and Causeway– would have no abortion provider, with the one remaining clinic (Woman's) without one of the two doctors that normally serves its patients.

307. Women's Clinic would have only Doe 5 to handle not only all patients at that facility but the patients at the other four. According to Cochran, the Administrator at Women's Health, Doe 6 provided 60% of the abortion services at this center. As she testified, "[e]ven if Dr. Doe 5 were to commit all of his time to serving patients at Women's Clinic, I do not see how we could serve all of the patients who [would] be coming to our doors once Delta Clinic closes . . . ." (JX 109 ¶ 37.)

[57] The question of whether this substantial number translates into a "large fraction" for purpose of the undue burden analysis is discussed later in this Ruling. *See infra* Parts XI–XII.

308. Furthermore, since Women's Health would be the only clinic to serve all the women of Louisiana, it clearly could not perform that task as a logistical matter. Doe 5 performed a total approximately 2,950 abortions in the year 2013 at Delta and Women's. (JX 110 ¶ 7.) Given the 9,976 abortions performed in Louisiana in that same year,[58] and putting aside the issue of the distance which would need to be traveled by women in north Louisiana, approximately 70% of the women in Louisiana seeking an abortion would be unable to get an abortion in Louisiana.

309. Given that the total number of women of reproductive age in Louisiana is 938,719 according to Defendant expert mathematician and statistician, Solanky, (DX 148; DX 151; Doc. 193 at 138–39),[59] this would mean that over 99% of women of reproductive age in Louisiana, regardless of location or distance to the physician, would be without any physician within the actual borders of this state to perform an abortion.

310. Even if one were to conclude that Doe 3 will not quit or that his quitting is legally irrelevant, Act 620's will nonetheless result in the inability of a substantial number of Louisiana to obtain an abortion in this state. Just the loss of Doe 1 on Hope would be, according to Pittman, Hope's administrator, "devastating" to its operations and viability. (Doc 190 at 29.)

311. Doe 3 sees about 20 to 30 abortion patients per week, or roughly 1,000 to 1,500 per year. (*Id.* at 118.) This would leave roughly 5,500 Louisiana women seeking an abortion (or 55%) without the ability to get one. When one uses women of reproductive age as the denominator, the percentage of Louisiana women unable to get an abortion is still over 99%.

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[58] This data is taken from the affidavit of Defendant's expert, Solanky, who, in turn, took it from DHH's website. (DX 148 at 5.)

[59] This represents Louisiana women between the ages of 15 and 44. (DX 148 at 28–29.)

312. Even if one additionally assumes that Defendant's interpretation of Doe 2's privileges at Tulane is correct, so that he meets the requirements of Act 620 at Tulane, the Act's negative impact upon a woman's right to abortion in Louisiana would still be significant. Doe 2 performed a total of approximately 1,000 abortions last year at the two clinics where he worked. (Doc. 191 at 17–18.) Thus, if you combine his procedures with those of Does 3 and 5, there would still be some 4,500 women seeking an abortion (or about 45% of women seeking an abortion in a given year) who would otherwise be able to get abortion and who could not do so upon Act 620's enforcement. Utilizing the women of reproductive age as the denominator, that percentage would rise to over 99%.

313. Even if Doe 3 continued to practice and Doe 2's limited privileges at Tulane met the requirements of Act 620, two of Louisiana's five abortion clinics–Bossier and Delta–would be without an abortion provider.

314. The remaining three–Hope, Causeway and Woman's–would each be without one of the two providers who normally perform abortions, an insufficient number to service the patients in the region, let alone the number of patients who might come from other parts of the state because of similar insufficient capacity.

315. Analyzed regionally, if Act 620 were to be enforced, the Baton Rouge and Shreveport areas would have no facility, and the New Orleans area would have only one provider, rather than the two who currently work there. If, as Defendant argues, Doe 3's quitting is legally irrelevant and the Defendant's interpretation of Doe 2's privileges at Tulane is correct, Baton Rouge would be left with no facility, Shreveport with one (Hope) and New Orleans with two

(Causeway and Woman's). But each remaining facility would have only half the previous number of providers.

316. Abortion clinics in Louisiana routinely make efforts to recruit doctors to work at the clinics, such as placing advertisements throughout the state and working with reproductive health specialists to identify potential candidates. (Doc. 190 at 22, 24–25, 33, 87; Doc. 168-8 at 7–8.)

317. The anticipated admitting privileges requirement of Act 620 has made it difficult to recruit new doctors. (Doc. 190 at 24.) In Pittman's words, "It definitely has." (*Id.*)

318. For example, Hope recently identified an interested doctor, but this potential physician ultimately proved to be an unviable candidate as a result of Act 620's admitting privileges requirement. (*Id.* at 24–25.)

319. In addition, doctors who appear to be good candidates consistently express reluctance to be hired in Louisiana because of the numerous restrictions placed on abortion providers by Louisiana's existing laws and regulations. (*See id.* at 22–25.)

320. For the same reasons that Does 1, 2, 4, 5, and 6 have had difficulties getting active admitting privileges, reasons unrelated to their competence, the Court finds that it is unlikely that the effected clinics will be able to comply with the Act by recruiting new physicians who have or can obtain admitting privileges. A significant contributing factor to that inability is Act 620 and the difficulties it creates for a doctor with an abortion practice gaining active admitting privileges in the context of Louisiana's admitting privileges rules and practices.[60]

[60] While there was credible testimony that the hostile environment against abortion providers in Louisiana and nationally is another factor making recruiting difficult, (Doc. 190 at 22–25; JX 110 ¶¶ 16, 23 n.1; JX 109 ¶ 14), the Court did not consider this factor as being legally relevant under Firth Circuit jurisprudence. *See infra* Parts XI–XII.

321. The Court finds that the enforcement of Act 620 and the concomitant effect on restricted access to abortion doctors and clinics would result in delays in care, causing a higher risk of complications, as well as a likely increase in self-performed, unlicensed and unsafe abortions. (*See, e.g.*, *id.* at 222–24; Doc. 191 at 157–62.)

CONCLUSIONS OF LAW

X. Summary of Legal Arguments

322. Plaintiffs challenge Act 620 as unconstitutional on three broad grounds. First, under the rational review prong of the *Casey* test, Act 620 does not serve a legitimate state interest. (Doc. 102 at 5–7; Doc. 196 ¶¶ 322–34). Second, the effect of Act 620 is to place an undue burden on the right of Louisiana women to have an abortion. (Doc. 102 at 7–16; Doc. 196 ¶¶ 297–307). And third, the purpose of Act 620 is to create a substantial obstacle to a Louisiana woman's right to an abortion. (Doc. 102 at 16–19; Doc. 196 ¶¶ 308–21).

323. In her Partial MSJ, (Doc. 87), Motion for Reconsideration, (Doc. 144), and post-trial briefs, (Docs. 200–01), Defendant argues that three issues should be eliminated as a matter of law: (1) whether Act 620 serves a legitimate state interest under the *Casey* rational review test; (2) whether Act 620 imposes a medically unreasonable requirement; and (3) whether Act 620 has the improper purpose of placing an undue burden on abortion access in Louisiana.

324. The essence of Defendant's argument is that all three issues were decided as a matter of law in five recent Fifth Circuit decisions which are binding on this Court and require the granting of Defendant's motion for partial summary judgment. These decisions include: *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406 (5th Cir. 2013)

("*Abbott I*"); *Abbott II*, 748 F.3d 583; *Currier*, 760 F.3d 448; *Whole Woman's Health v. Lakey*, 769 F.3d 285 (5th Cir. 2014) ("*Lakey*"), *vacated in part*, 135 S. Ct. 399, 190 L. Ed. 2d 247(2014); and *Cole*, 790 F.3d 563. Further, in the alternative, Defendant argues that Plaintiffs failed on the merits to offer admissible and relevant evidence in support of their position that Act 620 has an improper purpose.

325. In addition, Defendant argues that the above cited cases set the legal standard for determining whether and to what extent Plaintiffs have shown that an undue burden exists and, as that standard is properly applied in this case, Plaintiffs have failed to meet their burden of showing either improper purpose or undue burden.

326. The essence of Plaintiffs' response is that: (1) *Currier*, *Abbott I* and *II*, *Lakey*, and *Cole* do not bind this Court on rational review because that analysis is fact-specific and must be evaluated in the context of this specific statute as applied in this specific state; (2) that the medical need and reasonableness of Act 620 are relevant to the issue of the statute's alleged undue burden; and (3) that medical need and reasonableness of Act 620 are relevant to the statute's purpose, an issue related to but separate from rational basis or the statute's effect, and one not addressed in these Fifth Circuit cases or at least not addressed in the context of the specific facts of this case.

327. Both sides agree that the question of whether the effect of Act 620 is to create an undue burden was properly ripe for the preliminary injunction hearing. Plaintiffs argue that, under the proper standard, Plaintiffs have shown both improper purpose and undue burden. Defendant argues they have proven neither.

XI. Test for Determining the Constitutionality of Act 620

328. "[F]or more than 40 years, it has been settled constitutional law that the Fourteenth Amendment protects a woman's basic right to choose an abortion." *Currier*, 760 F.3d at 453 (citing *Roe*, 410 U.S. 113).

329. The test to be applied in this circuit to determine the constitutionality of a law which arguably restricts a woman's right to an abortion is set out in five recent cases: *Currier*, *Abbott I*, *Abbott II*, *Lakey* and *Cole*. All five cases dealt, in part, with an admitting privileges requirement very similar to Act 620 as written and enacted. *Compare* LA. R.S. § 40:1299.35.2, *with, e.g.*, H.B. 2, 83d Legis., 2d Spec. Sess. (Tex. 2013); H.B. 1390, 2012 Legis., Reg. Sess. (Miss. 2012).

330. In order to be deemed unconstitutional, a statute restricting a woman's right to abortion must fail at least one of two different tests: the "rational basis" test or the "undue burden" test. *Currier*, 760 F.3d at 453 ("In addition to creating no undue burden, an abortion restriction must pass a rational basis test." (relying in part on *Gonzales v. Carhart*, 550 U.S. 124, 158, 127 S. Ct. 1610, 1633, 167 L. Ed. 2d 480 (2007) ("*Carhart*")); *see also Cole*, 790 F.3d at 576, 576 (citing the "trio of widely-known Supreme Court decisions [which] provide[] the framework for ruling on the constitutionality" of an abortion law–*Roe*, *Casey*, and *Gonzalez*–and distinguishing between the rational basis and undue burden tests).

331. In making this dual analysis, the Court must use a "two-step approach," first making a rational basis inquiry followed by an analysis of whether the statute creates at undue burden. *Lakey*, 769 F.3d at 293, 297.

A. Rational Basis Review

332. "The first-step of the analysis of an abortion regulation . . . is rational basis review, not *empirical* basis review." *Abbott II*, 748 F.3d at 596 (emphasis in original) (citing *Carhart*, 550 U.S. at 158).[61]

333. A statute passes the rational basis test if it "is rationally related to a legitimate state interest [and, in deciding if it is], we do not second guess the legislature regarding the law's wisdom or effectiveness." *Lakey*, 769 F.3d at 294 (citing *Abbott II*, 748 F.3d at 594).

334. Crucially, while the Parties introduced a great deal of evidence on the effects of Act 620, that evidence is not relevant in the rational basis review. "[T]here is 'never a role for evidentiary proceedings' under rational basis review." *Abbott II*, 748 F.3d 596 (quoting *Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1127 (7th Cir. 1995)). "[L]egislative choice is not subject to courtroom fact-finding." *Id*. at 594 (quoting *F.C.C. v. Beach Commnc'ns, Inc*., 508 U.S. 307, 315, 113 S. Ct. 2096, 2102, 124 L. Ed. 2d 211, (1993) (citing cases)). In applying this part of the test, a district court is not to relitigate the facts that led to the passage of the law. *Id.* (citing *Heller v. Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 2462, 125 L. Ed. 2d 257 (1993)).[62]

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[61] In *Currier*, the Fifth Circuit acknowledged that there is disagreement as to whether the rational review test is independent from and precedes the undue burden test but found it unnecessary to resolve the dispute. 760 F.3d at 454. *Lakey*, however, clearly reaffirmed *Abbott II* in what it calls the Fifth Circuit's "two-step approach: first determining whether the law at issue satisfies rational basis, then whether it places a substantial obstacle in the path of a large fraction of women seeking abortions." *Lakey*, 769 F.3d at 297 (citing *Abbott II*, 748 F.3d at 593, 597).

[62] It is interesting, however, that the Fifth Circuit did discuss testimony and other evidence introduced at the trial in connection with its conclusion that the law passed rational review by serving a medical purpose and that the thirty mile geographic restriction requirement also passed rational review. *Abbott II*, 748 F.3d at 595 ("There is sufficient evidence here that

335. Rather, "the rational basis test seeks only to determine whether there is any conceivable basis for the enactment." *Id.* (citing *Beach Commc'ns*, 508 U.S. at 313). "A law 'based on *rational speculation* unsupported by evidence or empirical data' satisfies rational basis review." *Id.* (emphasis added) (quoting *Beach Commc'ns*, 508 U.S. at 315).

B. Undue Burden Test - Generally

336. Even if the law regulating abortion has a rational basis, it can still be unconstitutional if it "has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Casey*, 505 U.S. at 877; *see also, e.g.*, *Lakey*, 769 F.3d at 294; *Cole*, 790 F.3d at 572, 576.

337. Whether the law's "purpose" is to create an undue burden, or its "effect" does so unintentionally, are two different inquiries and are to be considered separately. *See Lakey*, 769 F.3d at 294 (emphasizing that this inquiry looks to whether the provision has " either 'the *purpose or effect*' of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus" (emphasis in original)); *cf. Jane L. v. Bangerter*, 102 F.3d 1112, 116 n.5 (10th Cir. 1996) (commenting that "[n]either the district court nor the [s]tate has focused on the fact that under *Casey*, a law is invalid if either its purpose or effect is to place a substantial obstacle in the path of a woman seeking to abort a nonviable fetus").

338. Unlike the rational basis test, proof is not only allowed, but is required, in order to satisfy the two prongs of the undue burden test. *Lakey*, 769 F.3d at 294–95 (reversing the district

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the geographic restriction has a rational basis."); *see also Cole*, 790 F.3d at 584 (in which the Fifth Circuit noted that Texas supported the rational basis of Texas H.B. 2 with evidence at trial).

court's finding that the admitting privilege requirement had an improper purpose because the court "cited no record *evidence* to support its determination that [this] provision was enacted for the purpose of imposing an undue burden on women seeking abortions, nor did it make any *factual finding* regarding an improper purpose" (emphasis added)); *Abbott II*, 748 F.3d at 597 ("[P]laintiffs offered no *evidence* implying that the State enacted the admitting privileges provision in order to limit abortions . . . ." (emphasis added)); *Cole*, 790 F.3d at 585 ("Plaintiffs bore the burden of proving . . . an improper purpose . . . [and] failed to proffer competent *evidence* contradicting the legislature's statement of a legitimate purpose." (emphasis added) (citation omitted)).

339. Therefore, two issues central to the undue burden test are (1) what *kind* of evidence is admissible to satisfy the purpose and effect prongs and (2) by what standard is this evidence to be measured in determining if the plaintiffs have met their burden?

340. As a threshold matter, the Court observes that the answer to these two questions is dramatically different depending on the circuit in which the issue is considered. In utilizing this measure, some require the regulation to be examined in a "real-world context." *Planned Parenthood Se., Inc. v. Strange* , 33 F. Supp. 3d 1330, 1337 (M.D. Ala. 2014) ("*Strange*"); *see also Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 963 & n.14 (W.D. Wis. 2015) ("*Van Hollen*") (specifically rejecting the conclusion that the Fifth Circuit's reasoning in *Abbott II* is consistent with *Casey* and emphasizing that the Seventh Circuit, as well as the Ninth, favor "balancing of benefits and burdens"), *aff'd*, 806 F.3d 908 (7th Cir. 2015). As explained by one court, this kind of "careful, fact-specific analysis" focuses on "how the restrictions would impede women's ability to have an abortion, in light of the circumstances in their lives." *Strange*,

33 F. Supp. 3d at 1338 (quoting the earlier *Planned Parenthood Se., Inc. v. Strange*, 9 F. Supp. 3d 1272, 1285 (M.D. Ala. 2014)); *see also, e.g.*, *Planned Parenthood of Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W. 2d 252, 268–69 (Iowa 2015) (holding undue burden test must be "context-specific"); *Planned Parenthood of Ariz., Inc. v. Humble*, 753 F.3d 905, 914 (9th Cir. 2014) (criticizing the Fifth and Sixth Circuit approaches for not being context-specific).

341. Under this approach, "real-world" factors must be considered by the court, including the role of poverty in creating increased obstacles for poor women who seek abortions, and the negative effects of violence against abortion providers on the granting of admitting privileges and recruiting of doctors. *See, e.g., Strange*, 33 F. Supp. 3d at 1351–53, 1356–58; *Van Hollen*, 94 F. Supp. 3d at 965, 976.

342. Under the Fifth Circuit approach, however, poverty related issues, e.g. increased challenges for poor women to get an abortion far from their home caused by lack of availability of child care, unreliability of transportation, unavailability of time off from work, etc., cannot be considered in the undue burden analysis because these issues were not caused by or related to the admitting privileges requirement. *See Cole*, 790 F.3d at 589.

343. Similarly, the Fifth Circuit has found "fear [of] anti-abortion violence" to be unrelated to the abortion regulation at issue; such fears are therefore legally irrelevant. *Abbott II*, 748 F.3d at 599.

344. This Court, therefore, has not considered the evidence presented on these "real world" issues in reaching its decision.

345. A second major difference in the approach taken by the circuits in applying the undue burden test is the standard by which the evidence is measured. The Seventh and Ninth Circuits as

well as a district court in the Eleventh Circuit have applied a test whereby "the extent of the burden a law imposes on a woman's right to abortion" must be compared to and weighed against "the strength of the state's justification for the law." *Humble*, 753 F.3d at 912; *see also, e.g.*, *Planned Parenthood of Wisconsin, Inc.*, 738 F.3d at 798; *Iowa Bd. of Med.*, 865 N.W.2d at 264; *Strange*, 33 F. Supp. 3d at 1337.

346. The Fifth Circuit has specifically rejected this balancing or weighing test: "[O]ur circuit does not incorporate a balancing analysis into the undue burden analysis." *Lakey*, 769 F.3d at 305; *accord, e.g.*, *Abbott II*, 748 F.3d at 593–94; *Cole*, 790 F.3d at 587 n. 33; *see also, e.g.*, *Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 513 (6th Cir. 2012) (Moore, J., dissenting in part) (noting that "a 'substantial obstacle' has never been defined as a total obstacle" and that "in evaluating the impact of restrictions, rarely do courts rely exclusively on percentages"); *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 170 (4th Cir. 2000) ("In making this undue-burden assessment, the Supreme Court has repeatedly emphasized that the focus must be aimed more directly at the ability to make a decision to have an abortion as distinct from the financial cost of procuring an abortion." (emphasis in original)).

347. Rather, the Fifth Circuit has adopted another test which is detailed below. This Court has used the Fifth Circuit test in reaching its decision.

C. Undue Burden - Purpose Prong

348. *Casey* suggests that one challenging the statute's purpose must show that the statute "serve[s] no purpose other than to make abortions more difficult." 505 U.S. at 901; *accord Cole*, 790 F.3d at 585–86; *see also Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865,

1866–67, 138 L. Ed. 2d 162 (1997) (per curium) (stressing that "[w]e do not assume unconstitutional legislative intent even when statutes produce harmful results" and faulting plaintiff for not offering at least "*some* evidence of that improper purpose" (emphasis in original)).

349. While Defendant argues that evidence of the purpose prong should be limited to the statute's text and official legislative history, (Doc. 87-1 at 18–22), the Court disagrees. In *Okpalobi v. Foster*, the Fifth Circuit found that a district court is "not to accept the government's proffered purpose if it is a mere 'sham.'" 190 F.3d 337, 354–56 (5th Cir. 1999) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 586–87, 107 S. Ct. 2573, 2579, 96 L. Ed. 2d 510 (1987) (specifying the requirements for a law's analysis under the Constitution's Establishment Clause)), *superceded on other grounds*, 244 F.3d 405 (5th Cir. 2001); *see also, e.g., Croft v. Perry*, 624 F.3d 157, 166 (5th Cir. 2010) ("[W]e do review to ensure that the alleged secular purpose is the actual purpose[.]"); *cf. Planned Parenthood of Kan. & Mid-Mo. v. Moser*, 747 F.3d 814, 841 (10th Cir. 2014) ("[T]he Supreme Court has considered legislative motive or purpose in assessing whether a statute is valid under the Establishment Clause and the Equal Protection Clause."). As stated by the Supreme Court in its most recent abortion case, a court should not "place dispositive weight on [legislative] factual findings . . . where constitutional rights are at stake." *Carhart*, 550 U.S. at 165; *see also Latta v. Otter*, 771 F.3d 456, 469 (9th Cir. 2014) ("Unsupported legislative conclusions as to whether particular policies will have societal effects of the sort at issue in this case—determinations which often, as here, implicate constitutional rights—have not been afforded deference by the Court."), *cert. denied*, 135 S. Ct. 2931 (2015). Instead, all federal courts "retain[] an independent constitutional duty to review . . . [those] findings, (*Id.*), for "the judicial

power of the United States," a power wielded by all Article III judges, "necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function," *Crowell v. Benson*, 285 U.S. 22, 60, 52 S. Ct. 285, 296, 76 L. Ed 598 (1932), *cited in Carhart*, 550 U.S. at 165. As such, "[u]ncritical deference to . . . [a legislature's] factual findings in these cases is inappropriate." 550 U.S. at 166; *see also Bowen v. Kendrick*, 487 U.S. 589, 601, 108 S. Ct. 2562, 2570, 101 L. Ed. 2d 520 (1988) (commenting that "in the course of determining the constitutionality of a statute, referred not only to the language of the statute but also to the manner in which it had been administered in practice"); *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 332 (6th Cir. 2007) (citing *Carhart*, 550 U.S. at 166).

350. Therefore, in searching for a law's purpose as a part of the undue burden analysis, a court can look to "various types of evidence, including the language of the challenged act, its legislative history, and the social and historical context of the legislation or other legislation concerning the same subject matter as the challenged measure." *Okpalobi*, 190 F.3d at 354–56; *see also, e.g.*, Roy G. Speece, Jr., *The Purpose Prong of Casey's Undue Burden Test and Its Impact on the Constitutionality of Abortion Insurance Restrictions in the Affordable Care Act or Its Progeny*, 33 WHITTIER L. REV. 77, 99 (2011) (where, reviewing *Okpalobi* and other cases, the author lists a "broad array of factors" considered by courts to determine purpose, including "a bill's social and historical context").

351. However, the Fifth Circuit in *Cole* ruled that evidence that the statute has no health benefits does not prove that the statute "must have had an invalid purpose." 790 F.3d at 585 (quoting *Mazurek*, 520 U.S. at 973). Furthermore, evidence that shows "medical and scientific

uncertainty" about the statute's health benefits, "does not lead to the conclusion that a law is unconstitutional." *Id.* (citing *Carhart*, 550 U.S. at 163).

352. Under the Fifth Circuit standard, an abortion regulation satisfies the purpose prong unless the regulation serves "no purpose other than to make abortions more difficult." *Id.* at 586 (quoting *Casey*, 505 U.S. at 901); *see also, e.g.*, *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 607 (6th Cir. 2006) (quoting this same language from *Casey*).

D. Undue Burden - Effect Prong

353. In order for the plaintiffs to prevail under Fifth Circuit jurisprudence, they must prove, "at a minimum," that a "***large fraction***" of women of reproductive age in Louisiana have a substantial obstacle to an abortion placed in their paths as a result of the challenged law. *Cole*, 790 F.3d at 586, 588–89 (emphasis added) (relying on *Lakey*, 769 F.3d at 296, and *Abbott II*, 748 F.3d at 600); *see also, e.g.*, *Gonzales*, 550 U.S. at 167–68; *Casey*, 505 U.S. at 895.

354. This test begs two critical questions: what is a "large fraction"? And what is a "substantial obstacle"?

355. The Fifth Circuit has not provided a definition of the term "large fraction." Rather, its guidance comes by how that term has been applied.

356. As to the proper denominator, the Fifth Circuit's "binding precedent" requires this Court to use "all women of reproductive age or women who might seek an abortion . . . ." *Cole*, 790 F.3d at 589 (citing *Abbott I*, 734 F.3d at 414; *Abbott II*, 748 F.3d at 598; and *Lakey*, 769 F.3d at 299). However, language quoted from *Lakey* and relied upon by *Cole* suggests that the proper denominator might be the number of women who *actually* seek abortions, not the number who

"might" seek one, i.e. the entire population of women of reproductive age.[63] In any event, this Court has considered both.[64]

357. In *Cole*, the Court found that neither 16.7% nor 7.4% of Texas women of reproductive age constituted a large fraction. *Id.* at 588. *Abbott II* found that 10% did not. *See* 748 F.3d at 598. *Lakey* found that 17% was insufficient. 769 F.3d at 298 & n.13. *Currier* involved the closure of Mississippi's only abortion clinic, resulting in 100% of Mississippi women being adversely affected. 760 F.3d at 458–59. This was found sufficient. Thus, this Court has no specific mandate from the Fifth Circuit as to what percentage between 17% and 100% qualifies as a "large fraction."

358. In *Casey*, the Court also used the phrase "significant number" in describing the number of women who must be unduly burdened in order to render the statute unconstitutional. 505 U.S. at 894 ("The spousal notification requirement is thus likely to prevent a significant number of women from obtaining an abortion.").[65] *Cole* suggests that the two terms were used

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[63] "Here, the ambulatory surgical center requirement applies to every abortion clinic in the State, limiting the options for *all women in Texas who seek an abortion*. The appropriate denominator thus includes all women affected by those limited options." *Lakey*, 769 F.3d at 299 (emphasis added), *quoted in Cole*, 790 F.3d at 589.

[64] This Court agrees with *Cole's* holding that the denominator should not be the population of women upon whom an undue burden is placed (as urged by the *Cole* plaintiffs) because this, as the Court points out, is a tautology and guarantees that 100% of women so described will be adversely affected. *Cole*, 790 F.3d at 589. However, it seems to this Court that the most appropriate denominator would be the number of women who typically seek abortions; in Louisiana, that number is about 10,000 per year, (DX 148 ¶ 11). Regardless, "[h]owever much a district court may disagree with an appellate court, . . . [it] is not free to disregard the mandate or directly applicable holding of the appellate court." *Cole*, 790 F.3d at 581 (citing *United States v. Teel*, 691 F.3d 578, 582–83 (5th Cir. 2012)).

[65] Judge Stephen A. Higginson's concurring and dissenting opinion in *Lakey* notes that *Casey* used both terms, invalidating the spousal notification statute because it would prevent a "significant number" as well as a "large fraction" of women from obtaining an abortion. 769

synonymously, *Casey* stating that "significant number" amounted to a "large fraction." 790 F.3d at 586 n. 30 (citing *Casey*, 505 U.S. at 895). Unfortunately, neither term is defined. Nonetheless, this Court has considered both in the Ruling.

359. If the law results in the inability of all women of a given state to get an abortion within that state, the law has created a substantial obstacle, and the law is unconstitutional, even if those women can get an abortion in an adjoining state. *See Currier*, 760 F.3d at 457–58 (so holding, but cautioning that "[n]othing in this opinion should be read to hold that any law or regulation that has the effect of closing all abortion clinics in a state would inevitably fail the undue burden analysis"). *Cole* creates an exception to that rule where the out of state abortion facility is in "the same metropolitan area [as the closed facility], though separated by a state line." 790F.3d at 597. A further complication arises from the first of the two concluding observations in *Currier*: "Whether . . . [a s]tate . . . regulation would impose an undue burden . . . is not a question that can be answered without reference to the ***factual context*** in which the regulation arose and operates." *Currier*, 760 F.3d at 458 (emphasis added).

360. In measuring "substantial obstacle", the recent Fifth Circuit cases have primarily considered the increased travel distance required for a woman to get an abortion caused by the closure or anticipated closure of abortion facilities within the state. For instance, the court in *Cole* focused on "women who would face travel distances (one way) of over 150 miles in light of *Abbott II's* holding that 'an increase of travel of less than 150 miles for some women is not an undue burden under *Casey*.'" *Cole*, 790 F.3d at 588 (quoting *Abbott II*, 748 F.3d at 598).

F.3d at 308 (Higginson, J., concurring in part and dissenting in part) (citing *Casey*, 505 U.S. at 893-95).

361. However, *Cole* "recognize[d] that any statement of 'how far is too far' will involve some imprecision." *Id.* at 594. *Cole* also suggested that "no distance, standing alone, could be too far." *Id.* at 594 (citing *Abbott II*, 748 F.3d at 598 (so reading *Casey*)). In holding the ambulatory surgical center provision unconstitutional as applied to a clinic in McAllen, Texas, *Cole* held that the 235 mile distance to the nearest clinic, *combined with* the "difficulties" and "practical concerns"[66] of McAllen women after the closure of that clinic, was a sufficient basis for finding the statute unconstitutional. *Cole*, 790 F.3d at 593–594, 585 n.29, 594 n.42.

362. Fifth Circuit jurisprudence does not allow this Court to consider the poverty of many Louisiana women and its effect in creating additional burdens and obstacles to utilizing an abortion facility farther away from their home. *Cole*, 790 F.3d 589 (citing *Lakey*, 769 F.3d at 299, and *Abbott I*, 734 F.3d at 415 (holding that "obstacle[s] that are unrelated to the hospital-admitting-privileges requirement" are irrelevant to the undue-burden inquiry in a facial challenge)).

363. This same jurisprudence, moreover, does not allow the Court to consider the very real violence and threats of violence towards abortion providers and its effect in the decision of Doe 3 to quit his abortion practice if Act 620 becomes effective. *Abbott II*, 748 F.3d at 599. Nor can the Court consider the very real difficulties this violence creates on the ability of abortion clinics to recruit new doctors. *Id.*

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[66] These "difficulties" and "practical concerns" included evidence that some women would be unable to make the trip from McAllen to San Antonio or Houston to obtain an abortion and, further, that the closure of the McAllen clinic would result in an increase in self-attempted abortions. *Cole*, 790 F.3d at 593; *see also supra* Part V. The Fifth Circuit provided no more guidance as to what other kinds of difficulties and practical concerns might properly be considered.

XII. Analysis

A. Rational Basis

364. Plaintiffs argue that Act 620 does not further a valid state interest. (Doc. 196 ¶¶ 322–27; Doc. 202 ¶¶ 153–57.) This issue was disposed of in the Court's earlier ruling on Defendant's Partial MSJ. (Doc. 138.)

365. In particular, this Court there held:

> The admitting privileges requirement of Act 620 is substantially similar to both Texas H.B. 2 and Miss. H.B. 1390. To the extent that Plaintiffs contend that Act 620 is not rationally related to a legitimate state interest because it is medically unreasonable or unnecessary, this Court is bound by the Fifth Circuit's previous rulings in *Abbott II*, *Currier* and *Lakey*. . . . [These cases] make clear that the admitting privileges provision of Act 620 passes rational basis review. *Abbott II*, 748 F.3d at 599-600; *Currier*, 760 F.3d at 454; *Lakey*, 769 F.3d at 293.

(Doc. 138 at 17.)

366. In *Cole*, the Fifth Circuit reaffirmed its position on this issue, as summarized by this Court. 790 F.3d at 584.

367. Therefore, this Court holds (again) that Act 620 passes rational basis review.[67]

B. Undue Burden - Purpose of Act 620

368. Plaintiffs argue that the true purpose of Act 620 is to eliminate or unduly burden Louisiana women's access to abortions by imposing a medically meaningless requirement that

[67] However, in its argument on this point, (Doc. 201 at 3–4), Defendant mischaracterizes this Court's earlier ruling. The Court did not, as suggested by Defendant, "reject Plaintiffs' claim that Act 620 imposes a medically unreasonable requirement that fails to protect women's health." (*Id.*) Rather, using the non-evidence-based "rational speculation" standard, the Court found that Act 620 meets rational basis review without regard to evidence on this issue. (Doc. 138 at 17–21.)

most, if not all, abortion doctors can not meet for reasons which are unrelated to their competency. Thus, Plaintiffs argue, the statute violates the purpose prong of the undue burden test and is unconstitutional.

369. Plaintiffs argue that the Court is not required to accept at face value Act 620's official purpose as stated in the legislation and that its true and improper purpose was proven at trial by a) public statements by the Governor and the author of the bill which demonstrate that the true purpose of the legislation is to eliminate, not regulate, abortion; b) evidence that those participating in the drafting of the bill are associated with groups dedicated to the elimination of abortion; c) evidence that Act 620 is medically unnecessary and unreasonable; and, finally, d) evidence that any limited medical benefits brought by the Act are far outweighed by the burden that it places on a woman's right to an abortion.

370. Defendant argues that (1) the Act's legislative history, including the medical testimony received by the Legislature, shows that the true purpose of the bill is to further the health and safety of women undergoing an abortion; (2) the intention of individual legislators or lobbyists is legally irrelevant to the bill's purpose and cannot be considered by this Court; (3) the evidence at trial proved that the bill was medically necessary, beneficial and reasonable; (4) even if there is a legitimate debate about the Act's medical necessity and reasonableness, this "medical uncertainty" cannot render the Act unconstitutional and (5) Fifth Circuit jurisprudence forecloses this Court from weighing the Act's benefits against its harms.

371. The Court's factual findings on these issues have been summarized above. *See supra* Parts V–IX.

372. The rule in the Fifth Circuit, which this Court is bound to follow, is where there is medical and scientific uncertainty about the need or benefits of an abortion restricting law, Plaintiffs have failed to meet their burden in establishing an improper purpose. The Court is not permitted to weigh the benefits of the law against its burdens. It is only where the sole purpose of the law is an improper one, can Plaintiffs succeed on this prong. Plaintiffs have failed to make this showing.

C. Undue Burden - Effect of Act 620

373. The Court finds that Act 620 will have the effect of placing an undue burden on (i.e. placing a substantial obstacle in the path of) a large fraction of Louisiana women of reproductive age seeking an abortion.

374. As summarized in the Findings of Fact, *see supra* Parts V–IX, Act 620 will have the effect of making abortions unavailable to approximately 55% of women seeking abortion in Louisiana and over 99% of women of reproductive age. The Court concludes that either percentage is a large fraction and a significant number.

375. Even if one were to assume that Doe 2's privileges at Tulane meet the requirements of Act 620, which this Court finds is not the case, *see supra* Part VIII.B, this undue burden would still exist. Under this scenario, the reduced number of abortion providers would result in some 45% of women seeking abortions–and over 99% of Louisiana women of reproductive age–being unable to get an abortion at a Louisiana facility. The Court concludes that either percentage is a large fraction and a significant number.

376. In addition to the increased distance some women would have to travel to find a facility with the capacity to perform their abortion, there are the practical concerns and difficulties of increased risk of complications caused by delays in care, as well as a likely increase in self-performed, unlicensed and unsafe abortions. (Doc. 190 at 223–24.)

377. Defendant argues that Act 620 is not unconstitutional because any undue burden that it has created is not caused by or related to the statute.

378. In order for an undue burden or substantial obstacle to render a law unconstitutional, that burden or obstacle must be *created by or related to* the statute in question, in this case, the admitting privileges requirement. *K. P. v. LeBlanc*, 729 F.3d 427, 442 (5th Cir. 2013) (relying on, among others, *Harris v. McRae*, 448 U.S. 297, 316, 100 S. Ct. 2671, 2688, 65 L. Ed. 2d 784 (1980)); *accord, e.g.*, *Collins v. Hoke*, 705 F.2d 959, 962 (8th Cir. 1983) (quoting and applying *Harris*, 448 U.S. at 316); *W. Va. Ass'n of Cmty. Health Ctrs. v. Sullivan*, 737 F. Supp. 929, 944 (S.D. W. Va. 1990) (same).

379. Consequently, a facial challenge can be sustained only if "the law itself imposes an undue burden on at least a large fraction of women." *Cole*, 790 F.3d at 589 (quoting *Lakey*, 769 F.3d at 299; *Abbott I*, 734 F.3d at 415; *Harris*, 448 U.S. at 316; and *Maher v. Roe*, 432 U.S. 464, 474, 97 S. Ct. 2376, 2382–83, 53 L. Ed. 2d 484 (1977)).

380. Where the relevant obstacle was "*neither created nor in any way affected by* the . . . regulation," then it is not the law itself which imposes the burden. *Maher*, 432 U.S. at 474 (emphasis added). Stated another way, "although government may not place obstacles in the path of a woman's exercise [of her right], it need not remove those not of its own creation." *Harris*, 448 U.S. at 316 (quoting *Maher*, 432 U.S. at 474).

381. In this case, Act 620 requires abortion doctors to get "active admitting privileges," including being admitted as a member in good standing of the medical staff, at a nearby hospital. LA. R.S. § 40:1299.35.2; *see also supra* Part VI. However, the Act does not set the criteria necessary for obtaining those privileges and there is no state law or other uniform standard that sets these criteria. *See supra* Parts V–VI, IX. Instead, the law relies on the highly variable requirements set in the by-laws of each hospital. *Id.*

382. The Act therefore anticipates and relies upon existing private hospital's varying by-laws' admitting privileges requirements as allowed under Louisiana law. It delegates to private hospitals the duty of granting (or withholding) active admitting privileges and thereby utilizes by-laws and private hospital credentialing committees as instruments for the implementation of the Act. Unquestionably then, the admitting privileges law and practices existing in Louisiana before Act 620 are "related to" Act 620. As is discussed in detail above, it is the two working in concert that has created the inability of Doe 1, 2, 4, 5 (in Baton Rouge), and 6 to get the kind of active admitting privileges which the Act itself mandates. *See supra* Parts V.D, IX.

383. While not raised by Plaintiffs in this case, another court has held that a law essentially identical to Act 620 denied due process "based on the State delegating decisionmaking over the plaintiffs' right to their chosen profession to private entities, namely hospitals, without adequate oversight or a mechanism to waive or appeal the hospitals' denial of admitting privileges . . . ." *Van Hollen*, 94 F. Supp. 3d at 954.

384. Specifically, the district court in *Van Hollen* held that a hospital's business needs did not further any legitimate state interest nor did the requirement of some hospitals that the applying doctor show a record of in-patient care. *Id.* at 963–64. Necessarily, this Court holds,

based on the law of this circuit, that Act 620 furthers a legitimate state interest. Nevertheless, *Van Hollen*'s logic bolsters its own decision that the effective discrimination against abortion providers growing out of the admitting privileges requirements of Louisiana hospitals (especially in the absence of the protection against discrimination provided under other state laws) are related to and caused by Act 620.

385. As already noted, *see supra* Part VIII.B, in interpreting a state or federal statute, courts traditionally focus not only on "the language itself [and] the specific context in which the language is used [but also] the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341; *see also, e.g.*, *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 486–87 (5th Cir. 2013) (citing *id.*).

386. An analysis of the statute's broader context is, in turn, informed by another cardinal rule of statutory construction: Congress, and by implication, any state legislature is "presumed to know the [existing] law, including judicial interpretation of that law, when it legislates." *Day v. Persels & Assocs.*, LLC, 729 F.3d 1309, 1332 (11th Cir. 2013); *see also, e.g.*, *Wiersum v. U.S. Bank, N.A.*, 785 F.3d 483, 488 n.5 (11th Cir. 2015)*; cf. Hernandez-Miranda v. Empresas Diaz Masso, Inc.*, 651 F.3d 167, 175 (1st Cir. 2011) ("The understanding of a term employed by Congress is ordinarily determined at the time of enactment."); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 322–26 (2012) (outlining the prior-construction canon).

387. In effect, therefore, courts customarily impute to the legislature an awareness of any legal strictures relevant to a particular enactment's application. *See, e.g.*, *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97, 99 S. Ct. 1946, 1957–58, 60 L. Ed. 2d 560 (1979); *see also, e.g.*,

Johnson v. Hous. Auth. of Jefferson Parish, 442 F.3d 356, 362 n.33 (5th Cir. 2006) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law." (internal quotation marks omitted) (citing *id.*)); *Trigon Ins. Co. v. United States*, 215 F. Supp. 2d 687, 698 (E.D. Va. 2002) ("Congress is presumed to know the existing statutory framework into which an amending statute fits."); *cf. Texas v. United States*, 497 F.3d 491, 501 (5th Cir. 2007) (explaining that, under *Chevron*, a court must determine whether the relevant "regulations reasonably flow from the statute when viewed in context of the overall legislative framework and the policies that animated Congress's design").

388. In other words, statutory interpretation does not take place in a vacuum, and any reasonable understanding of the statute's effect requires awareness of the preexisting legal regime.

389. As discussed above, *see supra* Parts V, IX, the Court finds that Louisiana's credentialing process and the criteria found in some hospital by-laws work to preclude or, at least greatly discourage, the granting of privileges to abortion providers, including the following:

- There are no laws or regulations in Louisiana mandating certain minimum objective credentialing criteria to assure that credentialing decisions are made only on objective, competency-related factors, akin to the American Medical Association's guidelines.[68]
- The credentialing processes adopted by the hospitals in question permit them to deny privileges for reasons purely personal and unrelated to the competency of the

[68] *See supra* note 25.

physician including, specifically, anti-abortion views held by some involved in credentialing;

- Louisiana law does not prevent a hospital or credentialing personnel from discriminating against abortion providers based on their status as abortion providers, regardless of their competency; and
- By having no maximum time period within which applications must be acted upon, a hospital can effectively deny a physician's application without formally doing so and therefore affect a de facto denial without expressing the true reasons (or any reasons) for doing so.

390. Indeed, the Court finds that, since Act 620 was enacted, these specific aspects of how Louisiana hospitals grant, deny, or withold hospital admitting privileges, have played a significant contributing role in Louisiana's abortion providers not being given privileges or being given only limited privileges. *See supra* Parts V–VI, IX.

391. The Court therefore finds that Act 620, acting in concert with existing Louisiana law on abortion and Louisiana law and practice as it pertains to hospital admitting privileges, is facially unconstitutional in placing an undue burden on the right of a large fraction of Louisiana women to an abortion.

XIII. Conclusion

A. Motion to Reconsider Rulings on Summary Judgment and Motion in Limine

392. As explained above, *see supra* Part II, Defendant moved for partial summary judgment, (Doc. 87), which was opposed, (Doc. 104). In the Partial MSJ, Defendant maintained

that Act 620 met both the rational basis and the purpose prong of the undue burden test as a matter of law. (Doc. 87 at 7 (summarizing Defendant's argument).) The Court granted the motion as to rational basis but held there were questions of fact which precluded the granting of the motion as it pertained to the purpose prong. (Doc. 138.)

393. For the same basic reasons, Defendant's Motion in Limine sought to exclude Plaintiffs' proposed evidence of Act 620's purpose including evidence of medical reasonableness and the evidence regarding the drafting of Act 620. (Doc. 95.) This was denied. (Doc. 139.)

394. Based on the intervening *Cole* case, Defendant moved for reconsideration of that part of the summary judgment ruling that dealt with the purpose prong and the Court's rulings denying Defendant's Motion in Limine. (Doc. 144.) This request was also opposed. (Doc. 150.) Because of the complexity of the issue and the proximity of the upcoming trial date, the matter was taken under advisement and deferred to trial.

395. Set forth in Federal Rule of Civil Procedure 56, FED. R. CIV. P. 56, the standard for deciding a summary judgment is well known and was set forth in the Court's original ruling. (Doc. 138 at 8–9.) It is the standard used in the current motion.

396. *Cole* holds that where there is conflicting medical testimony regarding the medical need for and reasonableness of the law, the law meets the purpose prong. 790 F.3d at 585. However, this narrow and tailored legal conclusion does not mean that medical testimony on these issues is not relevant and admissible. Thus, while this Court ultimately held that Act 620 meets the purpose prong, this was only after a consideration of the evidence on this issue.

397. Similarly, while this Court found that emails and public statements of those involved in drafting and supporting the legislation was not sufficient to establish Act 620's purpose as

unconstitutionally illicit, the evidence was nonetheless relevant. *See Okpalobi*, 190 F.3d at 355–56 (stating that involvement of an anti-abortion group in the drafting of the legislation is insufficient by itself, but not inadmissable, to show the statute's purpose).

398. In light of these distinctions, with the substantive law applied by this Court left unchanged after *Cole* and with no newly discovered evidence having been presented, the Court therefore denies Defendant's Motion for Reconsideration. *See, e.g.*, *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473–75 (5th Cir. 1989) (commentating that Rule 59(e) motions "serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence" (internal quotation marks omitted) (citing *Keene Corp. v. Int'l Fidelity Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982))); *see also Circuit City Stores, Inc. v. Mantor*, 417 F.3d 1060, 1064 n.1 (9th Cir. 2005) ("A Rule 59(e) motion is appropriate if the district court: (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." (internal quotation marks omitted)).

B. Preliminary Injunction

(1) Preliminary Injunction Standard

399. "[T]he burden of proving the unconstitutionality of abortion regulations falls squarely on the plaintiffs." *Abbott II*, 748 F.3d at 597.

400. The four prerequisites which Plaintiffs must show are: (1) they are substantially likely to succeed on the merits; (2) absent the injunction, there is a significant risk of irreparable

harm; (3) the balance of hardships weighs in their favor; and (4) granting the preliminary injunction will not adversely affect the public interest. *See, e.g.*, *Opulent Life Church v. City of Holly Springs, Miss.* 697 F.3d 279, 288 (5th Cir. 2012); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998)*; Vaughn v. St. Helena Parish Police Jury*, 192 F. Supp. 2d 562, 575 (M.D. La. 2001) (citing *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 (5th Cir. 2001)).

401. A preliminary injunction is "an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion on all four (4) pre-requisites[.]" *Ledet v. Fischer*, 548 F. Supp. 775, 784 (M.D. La. 1982) (citations omitted); *accord Kliebert*, 2015 U.S. Dist. LEXIS 146988, at *71–73, 2015 WL 6551836, at *21–22; *see also, e.g.*, *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (emphasizing that the movant must "clearly carr[y]" burden to obtain "extraordinary and drastic remedy" of preliminary injunction and quoting the four elements as formulated in *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)).

402. This heavy burden applies when plaintiffs seek to enjoin regulations that may impact abortion access. *See Mazurek*, 520 U.S. at 972 ("'[A] 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 CHARLES WRIGHT *ET AL.*, FEDERAL PRACTICE AND PROCEDURE § 2948 (2nd ed. 1995))).

(2) Application of Preliminary Injunction Standard

403. There is a substantial threat that, were Act 620 to be enforced, irreparable injury would result to the Plaintiffs and their patients.

404. As explained in detail above, *see supra* Part XII, the Act will violate the constitutional right of Louisiana women to abortion. This is, by definition, irreparable harm. *Deerfield Med. Ctr. v. Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (holding that the fact that if a woman's right to an abortion is "'either threatened or in fact being impaired' . . . mandates a finding of irreparable injury") (citing to *Elrod v. Burns*, 427 U.S. 347, 373–74, 96 S. Ct. 2673, 2689–90, 49 L. Ed. 2d 547 (1976))).

405. Likewise, the severely restricted access to abortion care by a large fraction of Louisiana women caused by Act 620, and the resulting unreasonable and dangerous delays in scheduling abortion procedures, constitute irreparable harm for Louisiana women seeking abortions. *See Jackson Women's Health Org. v. Currier*, 940 F. Supp. 2d 416, 424 (S.D. Miss. 2013), *aff'd in part*, 760 F.3d 448.

406. Many Louisiana women will also face irreparable harms from the burdens associated with increased travel distances in reaching an abortion clinic with sufficient capacity to perform their abortions. These burdens include the risks from delays in treatment including the increased risk of self-performed, unlicensed and unsafe abortions.

407. The Court therefore finds that Plaintiffs have shown that the failure to grant the injunction will likely result in irreparable injury.

408. Plaintiffs have shown that the injury threatened by enforcement of Act 620 outweighs any damage the injunction may cause Defendant. While Plaintiff has given clear evidence of harm, Defendant, by contrast, has not shown that any damage would result from the issuance of a preliminary injunction. A preliminary injunction will preserve the status quo, and permit the clinics and physicians to continue to provide safe, needed abortion care to their patients. The

substantial injury threatened by enforcement of the Act – namely irreparable harm to women and the violation of their constitutional rights – clearly outweighs the impact of an injunction on Defendant. *See Currier*, 940 F. Supp. 2d at 424.

409. A preliminary injunction is also in the public interest. The public interest is not served by allowing an unconstitutional law to take effect. *Currier*, 940 F. Supp. 2d at 424 ("[T]he grant of an injunction will not disserve the public interest, an element that is generally met when an injunction is designed to avoid constitutional deprivations."); *see also, e.g.*, *Nobby Lobby, Inc. v. Dallas*, 970 F.2d 82, 93 (5th Cir. 1992) ("[T]he public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve") (citing *Nobby Lobby, Inc. v. Dallas*, 767 F. Supp. 801, 821 (N.D. Tex. 1991))).

410. Without an injunction, Louisiana women will suffer significantly reduced access to constitutionally protected abortion services, which will likely have serious health consequences.

411. The Court concludes that Plaintiffs have demonstrated that the threatened injury of Act 620 outweighs any damages the injunction may cause Defendant, and that the injunction will not disserve the public interest.

C. Judgment

For the reasons stated above, IT IS ORDERED that

1. Defendant's Motion to Reconsider Rulings on Summary Judgment and Motion in Limine, (Doc. 144), is DENIED.

2. The active admitting privileges requirement of LA. R.S. § 40:1299.35.2 is declared unconstitutional as violating the substantive due process rights of Louisiana women seeking abortions.

3. Plaintiff's Motion for Preliminary Injunction is GRANTED to the extent that any enforcement of LA. R.S. § 40:1299.35.2 is preliminarily enjoined as to the Plaintiffs: specifically, Doctor John Doe 1, Doctor John Doe 2, 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.[69] This injunction will remain in effect until further notice from this Court.

4. Because there are applications for active admitting privileges which technically remain "pending," the Court orders Plaintiffs to provide to the Court and Defendant on a monthly basis beginning March 1, 2016, with a notification of any changes in the status of the applications.

5. Should the applications status change, the Parties are free to seek any other relief that they may deem appropriate.

6. A status conference will be held on January 29, 2016, at 11:30 a.m., so as to consider, among other matters, what other proceedings must still take place and whether this Court should convert the preliminary injunction issued by this Ruling to a permanent one.

Signed in Baton Rouge, Louisiana, on January 26, 2016.

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

[69] An order enjoining enforcement of Act 620 against parties other than Plaintiffs herein would be overly broad. *Currier*, 760 F.3d at 459.

Tab C

Expert Report of Dr. Tumulesh Solanky (DX148)

DX-752

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC d/b/a HOPE MEDICAL GROUP FOR WOMEN, *et al.*,	*	CASE NO.: 3:14-cv-525 c/w: 3:14-cv-597
Plaintiffs	*	JUDGE: JOHN W. deGRAVELLES
VERSUS	*	
KATHY KLIEBERT, in her official capacity as Secretary of the Department of Health and Hospitals, *et al.*,	*	

Declaration of Tumulesh K. S. Solanky, PhD

Tumulesh K.S. Solanky, PhD, declares and states the following:

I. BACKGROUND AND QUALIFICATIONS

1. I am a professor and chair of the mathematics department at the University of New Orleans (UNO). I have a PhD degree in Statistics from the University of Connecticut. I have been teaching statistics and mathematics at UNO since August 1990. I have taught a number of graduate classes in statistics, such as Sampling Theory, Applied Statistics, Regression Analysis, Linear Models, Design of Experiments, Biostatistics, Statistical Consulting, Nonparametric Statistics, Multivariate Analysis, and Time Series Analysis.

2. At present, I serve as an associate editor of five scholarly journals including the *American Journal of Mathematical and Management Sciences*. My primary research interest is in the area of data collection/sampling strategies and deriving new sampling designs to collect and analyze data.

3. I have authored/coauthored a research level book in Statistics, two book chapters, and over twenty research articles in scholarly peer-reviewed journals. I have provided my statistical expertise to a number of local industries such as NASA, USDA, banks, hospitals, school boards, polling firms, District Attorney's Offices, and many others as a statistical consultant. As a statistical consultant I have designed a number of surveys and authored over 100 internal/expert reports.

4. I have testified in *Albert Woodfox v. Burl Cain, et al., Down South Entertainment v. SMG, Mumphrey v. Chalmette Medical Center*, and in a Medicare appeal in an Administrative Law Judge (ALJ) court as a statistical expert witness. I have also served as the court appointed statistical expert in a complex litigation matter between *Charles Foti, Attorney General EX REL. State of Louisiana vs. Janssen Pharmaceutica, Inc.* The details of these are available in my Curriculum Vitae attached as Exhibit "A".

II. OPINIONS TO BE EXPRESSED AND THE BASES FOR THEM

5. I have reviewed the following list of documents and materials: Louisiana Act No. 620 ("Act 620" or the "Act"), the Plaintiffs' Complaints, and the Declarations of Dr. Doe 1, Dr. Doe 2, Dr. Doe 3, Dr. Doe 4, Dr. Doe 5, Dr. Doe 6, Dr. Estes, Mr. Gross, Ms. Cochran and Ms. Pittman; *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 600 (5th Cir. 2014); *Planned Parenthood Southeast, Inc. v. Strange,* No. 2:13cv-0405-MHT, 2014 WL 3809403 (M.D. Ala., 2014), *Whole Women's Health v. Lakey,* (5th Cir. 2014); DHH Data sets and Tables available on the DHH website, U.S. Census Bureau's data file CC-EST2013-ALLDATA-[ST-FIPS].

6. I have been asked to provide an expert opinion with respect to Act 620, which requires Louisiana abortion providers to have admitting privileges at a hospital located within 30 miles of the facility in which the abortions are performed. More specifically, I have been asked to compile and analyze data related to the distance that Louisiana women located in all parishes of the state would have to travel to other regions to obtain abortion services as well as the distance to abortion facilities located in other states. I have been also asked to compile and analyze data regarding the distance required to travel to specialty facilities such as burn centers, cancer centers, trauma centers (whether in or out of state) for comparison, and, to analyze and apply data reported to the Louisiana Department of Health and Hospitals ("DHH") under R.S. 40:1299.35.10 and carry out any other analysis as needed.

7. I have examined the average distances traveled by Louisiana women to obtain abortion services in different hypothetical scenarios. In addition, I have calculated the average distances traveled to obtain other types of medical services that include burn center, breast center and trauma centers. As explained below, Louisiana women would have to travel an average of approximately 79 miles to obtain abortion services if facilities in Shreveport, New Orleans, Houston, Dallas, Mobile and Jackson are available to them. If only the abortion facilities in Shreveport and New Orleans are available, the average distance traveled increases slightly to 83 miles. In my opinion, both of the average distances calculated for travel to abortion facilities are comparable to the average distance traveled to obtain services at facilities for burn care (63.4 miles) and breast care at four in-state clinics (57 miles) and trauma facility care at four in-state centers (48.1 miles).

III. FACTS OR DATA CONSIDERED IN FORMING OPINIONS

8. The abortion facilities located in Louisiana and in the nearby cities of Houston (Texas), Dallas (Texas), Mobile (Alabama) and Jackson (Mississippi) are included in this report. They are listed as follows:

i. HOPE-Shreveport Medical Group for Women, 210 Kings Highway, Shreveport, LA 71104, (referred as "HOPE-SHREVEPORT" in this report).

ii.Women's Health Care Center, 2701 General Pershing St, New Orleans, LA 70115 (referred as "WHCC-NEW ORLEANS" in this report).

iii. Texas Surgical Center, 2505 N Shepherd Dr, Houston, TX 77008 (referred as "TSC-DALLAS" in this report).

iv. Planned Parenthood: Center for Choice Ambulatory Surgical Center, 4600 Gulf Fwy #300, Houston, TX 77023 (referred as "PP-HOUSTON" in this report).

v. Southwestern Women's Surgery Center, 8616 Greenville Ave, Dallas, TX 75243 (referred as "SWSC-DALLAS" in this report).

vi. Planned Parenthood, 7989 W. Virginia Drive, Dallas, TX 75237 (referred as "PP-DALLAS" in this report).

vii. Jackson Women's Health Org, 2903 N State St, Jackson, MS 39216 (referred as "JWHO-JACKSON" in this report).

viii. Planned Parenthood, 717 Downtowner Loop W, Mobile, AL 36609 (referred as "PP-MOBILE" in this report).

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9. The U.S. Census Bureau conducts a complete census every 10 years and provides estimates for the years in between[1]. The last complete census was carried out in 2010.

10. In June 2014, the U.S. Census Bureau released the "County Characteristics Resident Population Estimates" in the data file CC-EST2013-ALLDATA-[ST-FIPS]: Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2013. The data from this source are used to document the number of Louisiana women residing in all parishes of the state in the year 2013[2]. The data are attached as Exhibit "B".

11. The DHH website[3] provides a summary of the abortion data by age and other characteristics for each year in the ITOP (INDUCED TERMINATIONS OF PREGNANCY) Tables. Note that for the year 2013, women aged between 15 to 44 years had 9,903 out of 9,976 (=99.3%) abortions. The percentages for abortions between the age groups of 15 to 44 years for the year 2012 is 99.2%, and, for the year 2011 it is 99.0%.

12. The U.S. Census Bureau data file mentioned above also provides data by age group under the variable named "AGEGRP". By aggregating the values 4 through 9 of variable "AGEGRP", data was obtained on the women in the age group 15 to 44 years residing in each parish in Louisiana. The data for women in the age group 15 to 44 years is available in the Exhibit "B".

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[1] The Census Bureau's ***mission*** is to serve as the leading source of quality data about the nation's people and economy. [https://www.census.gov/aboutus/mission.html]

[2] The variable named "TOT_FEMALE" in the data file is the total female population in the parish. The variable named "YEAR" for the value of 6 provides the 7/1/2013 population estimate.

[3] http://new.dhh.louisiana.gov/index.cfm/page/709

13. The website www.google.com was used to find the driving distance of each parish from the various abortion facilities. For example, the website www.google.com was searched for the query "driving distance between Winn Parish, LA, and Southwestern Women's Surgery Center located at 8616 Greenville Ave, Dallas, TX 75243" to find the driving distance to the Southwestern Women's Surgery Center from the Winn Parish, LA[4]. A screen shot of the driving distance thus obtained is attached as Exhibit "C".

14. In order to estimate the distance that Louisiana women located in all parishes of the state would have to travel to obtain abortion services, the driving distance of each parish is weighted by the number of women in the parish. In Table 1, the estimated driving distances are reported under various scenarios based on the availability of the abortion facilities.

15. In order to explain this further, the report designates the 64 parishes in Louisiana as P_1, $P_2,\ldots,P_{64}$, and designates the population of women in those parishes as X_1, $X_2,\ldots,X_{64}$. That is, the parish P_i has the women population X_i, for i=1,…,64. Next, the report designates the driving distance to the abortion facility[5] from each parish as D_i, i=1,…,64. That is, there are potentially X_i women who will travel the distance D_i to the nearest abortion facility, i=1,…,64. And, the total distance driven by all women would be given by

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[4] For three parishes the driving distances from the parish to the abortion facility are unavailable on the www.google.com website. For these parishes a location was selected in the parish to obtain the driving distance. The parishes and the location selected in the parish are the following:
1. For St Bernard Parish: St Bernard Parish Court, 1101 W St Bernard Hwy, Chalmette, LA 70043.
2. For St Mary Parish: St Mary Parish Sheriff, 9311 U.S. 90 Frontage, Centerville, LA 70522.
3. For Terrebonne Parish: (Library) Library Dr, Houma, LA 70360

[5] Note that this driving distance would depend on the availability of the abortion facilities in Louisiana and the abortion facilities located in other states. This is explained further later on in the report.

Total Distance Traveled by All Women= $X_1 \times D_1 + X_2 \times D_2 + \ldots + X_{64} \times D_{64}$,

$$= \sum_{i=1}^{64} D_i X_i.$$

And the average distance traveled by a woman residing in Louisiana would be given by

Average Distance Traveled = (Total Distance Traveled by All Woman)/(Total Number of Women). Mathematically, this can be expressed as

$$Average\ Distance\ Traveled\ (All\ Women\ in\ Louisiana) = \frac{\sum_{i=1}^{64} D_i X_i}{\sum_{i=1}^{64} X_i}.$$

Furthermore, using the designation $Y_1, Y_2, \ldots, Y_{64}$ to denote the women population in the age group of 15 to 44 years in the 64 parishes, the average distance traveled by a woman in that age group residing in Louisiana would be given by

$$Average\ Distance\ Traveled\ (All\ Women\ in\ Louisiana\ in\ 15-44\ years\ of\ age) = \frac{\sum_{i=1}^{64} D_i Y_i}{\sum_{i=1}^{64} Y_i}.$$

16. In Table 1, the average distances traveled are reported for all women in Louisiana and also by all women in Louisiana in the age group of 15 to 44 years. The methodology described above is used to compute the reported average distances.

(i). Available Clinic is HOPE-SHREVEPORT: The first row in Table 1 reports the average distance traveled if HOPE-SHREVEPORT is the only available abortion clinic to the residents of

Louisiana. The average distance to be traveled by all women residing in Louisiana is 228.1 miles, and, if we restrict to the women in the age group 15 to 44 years the average distance to be traveled is 229.3 miles.

(ii). Available Clinic is WHCC-NEW ORLEANS: The second row in Table 1 reports the average distance traveled if WHCC-NEW ORLEANS is the only available abortion clinic to the residents of Louisiana. The average distance to be traveled by all women residing in Louisiana is 138.7 miles, and, if we restrict to the women in the age group 15 to 44 years the average distance to be traveled is 137.0 miles.

(iii). Available Clinics are HOPE-SHREVEPORT and WHCC-NEW ORLEANS: The third row in Table 1 reports the average distance traveled if HOPE-SHREVEPORT and WHCC-NEW ORLEANS are the only available abortion clinics to the residents of Louisiana. Assuming that the abortion clinic which is closer is selected, the average distance to be traveled by all women residing in Louisiana is 82.7 miles, and, if we restrict to the women in the age group 15 to 44 years the average distance to be traveled is 82.0 miles.

(iv). Available Clinics are Out-of-State: PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, and JWHO-JACKSON: The fourth row in Table 1 reports the average distance traveled if PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, and JWHO-JACKSON are the only available abortion clinics to the residents of Louisiana. Note that all of these six clinics are located in cities outside of Louisiana. Assuming that the abortion clinic which is closest is selected, the average distance to be traveled by all women residing in Louisiana is 171.4 miles, and, if we restrict to the women in the age group 15 to 44 years the average distance to be traveled is 170.8 miles.

(v). Available Clinics are a Combination of In-State and Out-of-State: HOPE-SHREVEPORT, WHCC-NEW ORLEANS, PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, and JWHO-JACKSON: The fourth row in Table 1 reports the average distance traveled if HOPE-SHREVEPORT, WHCC-NEW ORLEANS, PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, and JWHO-JACKSON are the only available abortion clinics to the residents of Louisiana. Assuming that the abortion clinic which is closest is selected, the average distance to be traveled by all women residing in Louisiana is 79.2 miles, and, if we restrict to the women in the age group 15 to 44 years the average distance to be traveled is 78.6 miles.

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Table 1: Average Distance Traveled to an Abortion Facility by Women in Louisiana

Availability of Abortion Clinics to Louisiana Residents	Average Distance Traveled by All Women	Average Distance Traveled by All Women in the Age Group 15-44 years
Louisiana Clinics		
HOPE-SHREVEPORT	228.1 miles	229.3 miles
WHCC-NEW ORLEANS	138.7 miles	137.0 miles
HOPE-SHREVEPORT, WHCC-NEW ORLEANS	82.7 miles	82.0 miles
Out-of-State Clinics		
PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, JWHO-JACKSON	171.4 miles	170.8 miles
In-State and Out-of-State		
HOPE-SHREVEPORT, WHCC-NEW ORLEANS, PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, JWHO-JACKSON	79.2 miles[6]	78.6 miles[7]

17. The Verification of burn centers is a joint program of the American Burn Association (ABA) and the American College of Surgeons (ACS)[8]. The ABA website lists the verified burn

[6] A 95% confidence interval for the travel distance is (67.4 miles, 91.0 miles).

[7] A 95% confidence interval for the travel distance is (66.9 miles, 90.3 miles).

[8] Source: http://www.ameriburn.org/verification_verifiedcenters.php

centers in United States and there are no verified burn centers in Louisiana. Also, there are no verified burn centers in Alabama, and Mississippi. The following is the listing of verified burn centers in Texas which are in the cities neighboring Louisiana:

i. Parkland Memorial Hospital, Regional Burn Center, 5201 Harry Hines Blvd., Dallas, TX 75235 (referred as "PMH-DALLAS" in this report).

ii. US Army Institute of Surgical Research, Adult Burn Center, Fort Sam Houston, TX 78234 (USAISR is located at Fort Sam Houston in the San Antonio Military Medical Center complex in Building 3611. The mailing address is: INSTITUTE OF SURGICAL RESEARCH, 3698 CHAMBERS PASS STE B, JBSA FT SAM HOUSTON TX 78234-7767 (referred as "USAISR-FSH" in this report).

iii. Shriners Hospitals for Children – Galveston, Pediatric Burn Center, 815 Market Ave Dr, Galveston, TX 77550 (referred as "SHC-GALVESTON" in this report).

iv. University of Texas Medical Branch Blocker Burn Center, Adult Burn Center, 301 8th St, Galveston, TX 77550 (referred as "UTM-GALVESTON" in this report).

v. Memorial Hermann Medical Center, 1333 Moursund St, Houston, TX 77030 (referred as "MHMC-HOUSTON" in this report).

vi. University Medical Center, 602 Indiana Ave, Lubbock, TX 79415 (referred as "UMC-LUBBOCK" in this report).

18. The following are the "BURN CARE FACILITIES" in Louisiana posted on the ABA website[9].

i. Baton Rouge General Adult Burn Center Mid-City, 3600 Florida Blvd, Baton Rouge, LA 70806 (referred as "BRG-FB-BR" in this report). Also at: Baton Rouge General Adult Burn Center Mid-City, 8585 Picardy Ave, Baton Rouge, LA 70809 (referred as "BRG-PA-BR" in this report).

ii. Our Lady of Lourdes Regional Medical Center, 4801 Ambassador Caffery, Lafayette, LA 70508 (referred as "OLLRMC-LAFAYETTE" in this report).

iii. Louisiana State University Health Sciences Center – Shreveport, 1501 Kings Highway, Shreveport, LA 71130 (referred as "LSUHSC-SHREVEPORT" in this report).

19. In Table 2, the average distances traveled are reported for all residents in Louisiana. The methodology described above is used to compute the reported average distances to the nearest verified burn center and burn care facility.

[9] http://www.ameriburn.org/BCRDPublic.pdf

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Table 2: Average Distance Traveled to a Verified Burn Center and/or Burn Care Facility in Louisiana

Availability of Verified Burn Center and/or Burn Care Facility to Louisiana Residents	Average Distance Traveled
Verified Burn Centers	
PMH-DALLAS, USAISR-FSH, SHC-GALVESTON, UTM-GALVESTON, MHMC-HOUSTON, UMC-LUBBOCK (No verified burn centers available in Louisiana, Alabama, and Mississippi)	274.9 miles
Burn Care Facilities in Louisiana	
BRG-FB-BR, BRG-PA-BR, OLLRMC-LAFAYETTE, LSUHSC-SHREVEPORT	63.4 miles
Verified Burn Centers and Burn Care Facilities in Louisiana	
PMH-DALLAS, USAISR-FSH, SHC-GALVESTON, UTM-GALVESTON, MHMC-HOUSTON, UMC-LUBBOCK, BRG-FB-BR, BRG-PA-BR, OLLRMC-LAFAYETTE, LSUHSC-SHREVEPORT	63.4 miles[10]

20. The Accredited breast center facilities[11] located in Louisiana are the following:

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[10] A 95% confidence interval for the travel distance is (53.6 miles, 73.2 miles).

[11] Accredited by the National Accreditation Program for Breast Centers (NAPBC). Accreditation by the NAPBC is granted only to those centers that are voluntarily committed to providing the best possible care to patients with diseases of the breast. Each breast center must undergo a rigorous evaluation and review of its performance and compliance with NAPBC Standards.

i. CHRISTUS SCHUMPERT BREAST CENTER, 902 Olive Street, Shreveport, LA 71104 (referred as "CSBC-SHREVEPORT" in this report).

ii. Pennington Cancer Center, 8585 Picardy, Baton Rouge, LA 70809 (referred as "PCC-BATON ROUGE" in this report).

iii. The Breast Center at Woman's Hospital, 100 Woman's Way, Baton Rouge, LA 70817 (referred as "BCWH-BATON ROUGE" in this report).

iv. The Lieselotte Tansey Breast Center, 1319 Jefferson Hwy, New Orleans, LA 70121 (referred as "LTBC-NEW ORLEANS" in this report).

21. In Table 3, the average distances traveled are reported for all women in Louisiana and also by all women in Louisiana in the age group of 15 to 44 years. The methodology described above is used to compute the reported average distances to the nearest breast center facility.

Table 3: Average Distance Traveled to an Accredited Breast Center Facility by Women in Louisiana

Availability of Accredited Breast Center Facility to Louisiana Residents	Average Distance Traveled by All Women	Average Distance Traveled by All Women in the Age Group 15-44 years
Louisiana Clinics		
CSBC-SHREVEPORT, PCC-BATON ROUGE, BCWH-BATON ROUGE, LTBC-NEW ORLEANS	57.0 miles[12]	55.8 miles[13]

[12] A 95% confidence interval for the travel distance is (46.9 miles, 67.1 miles).

[13] A 95% confidence interval for the travel distance is (45.8 miles, 65.8 miles).

22. The verified trauma center facilities[14] verified by the American College of Surgeons (ACG) located in Louisiana are the following:

i. Spirit of Charity – Interim LSU Public Hospital, Interim LSU Public Hospital, 2021 Perdido St., New Orleans, Louisiana (referred as "SC-NEW ORLEANS" in this report).

ii. Our Lady of the Lake Regional Medical Center, 5000 Hennessy Blvd, Baton Rouge, LA 70806 (referred as "OLLRMC-BATON ROUGE" in this report).

iii. University Health Shreveport, 1501 Kings Hwy, Shreveport, LA 71103 (referred as "UHS-SHREVEPORT" in this report).

iv. Rapides Regional Medical Center – Alexandria, 211 4th St, Alexandria, LA 71301 (referred as "RRMC-ALEXANDRIA" in this report).

23. In Table 4, the average distances traveled are reported for all residents in Louisiana. The methodology described above is used to compute the reported average distances to the nearest verified trauma center facility.

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[14] Accredited by the National Accreditation Program for Breast Centers (NAPBC). Accreditation by the NAPBC is granted only to those centers that are voluntarily committed to providing the best possible care to patients with diseases of the breast. Each breast center must undergo a rigorous evaluation and review of its performance and compliance with NAPBC Standards.

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Table 4: Average Distance Traveled to a Verified Trauma Center Facility in Louisiana

Availability of Verified Trauma Center Facility to Louisiana Residents	Average Distance Traveled
Louisiana Centers	
SC-NEW ORLEANS, OLLRMC-BATON ROUGE, UHS-SHREVEPORT, RRMC-ALEXANDRIA	48.1 miles[15]

Conclusions

26. The Louisiana women located in all parishes of the state would have to travel approximately 79 miles to obtain abortion services if the available clinics are the following: HOPE-SHREVEPORT, WHCC-NEW ORLEANS, PP-HOUSTON, TSC-DALLAS, PP-MOBILE, PP-DALLAS, SWSC-DALLAS, and JWHO-JACKSON. Also, if HOPE-SHREVEPORT and WHCC-NEW ORLEANS are the only two available clinics then the travel distance is under 83 miles. Nearly all (over 99%) women who have sought ITOP (INDUCED TERMINATIONS OF PREGNANCY) in the past three years are in the age group of 15 to 44 years. The travel distance for the women in the age group 15 to 44 years is approximately the same as all women in Louisiana.

27. The Louisiana residents located in all parishes of the state would have to travel approximately 63.4 miles to obtain burn care at a verified burn center or burn care facilities if the

[15] A 95% confidence interval for the travel distance is (40.6 miles, 55.7 miles).

available centers or facilities are the following: PMH-DALLAS, USAISR-FSH, SHC-GALVESTON, UTM-GALVESTON, MHMC-HOUSTON, UMC-LUBBOCK, BRG-FB-BR, BRG-PA-BR, OLLRMC-LAFAYETTE, LSUHSC-SHREVEPORT.

28. The Louisiana women located in all parishes of the state would have to travel approximately 57.0 miles to obtain breast clinic services if the available clinics are the following: CSBC-SHREVEPORT, PCC-BATON ROUGE, BCWH-BATON ROUGE, LTBC-NEW ORLEANS. The travel distance for the women in the age group 15 to 44 years is approximately the same as all women in Louisiana.

29. The Louisiana residents located in all parishes of the state would have to travel approximately 48.1 miles to obtain verified trauma center care if the available centers or facilities are the following: SC-NEW ORLEANS, OLLRMC-BATON ROUGE, UHS-SHREVEPORT, RRMC-ALEXANDRIA.

Limitations And Assumptions

30. The following are the limitations and assumptions made in this report.

i. The report assumes that any woman in Louisiana is equally likely to seek an abortion facility regardless of the parish in which she resides. If data is available on the past usage of the abortion facilities by parishes in Louisiana then the estimates provided in the report can be updated.

ii. The report assumes that distance traveled is the only criteria for selecting an abortion facility from a list of available abortion clinics.

iii. The distance traveled to an abortion facility is computed from the parish to a particular abortion facility.

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IV EXHIBITS TO BE USED TO SUMMARIZE OR SUPPORT OPINIONS

See Exhibits B and C attached.

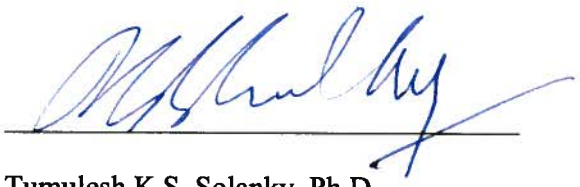
V. LIST OF ALL CASES DURING THE PREVIOUS FOUR YEARS IN WHICH I TESTIFIED AS AN EXPERT AT TRIAL OR BY DEPOSITION

See Exhibit A attached.

VI. STATEMENT OF COMPENSATION

My consultation fees are $200 per hour for expert report preparation. I will contribute my time *pro bono* for testifying either in deposition or at trial. I will be compensated for all travel-related expenses in connection with this case.

I declare under penalty of perjury that the foregoing is true and correct.



Tumulesh K.S. Solanky, Ph.D.

Dated: December 1, 2014

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EXHIBIT "A"

Curriculum Vitae of TUMULESH K. S. SOLANKY, Ph.D.

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Citizenship: USA

EDUCATION:

Ph.D. in Statistics	University of Connecticut, 1990
M.Sc. in Mathematics	Indian Institute Of Technology, New Delhi, India, 1987
B.Sc. in Mathematics (Honors)	University of Delhi, India, 1985

EMPLOYMENT AND POSITIONS:

1990-	Statistical Consultant
August 2008-	Professor and Chair of the Mathematics Department
2001- 2008	Professor of Mathematics, University of New Orleans
1995-2001	Associate Professor of Mathematics, University of New Orleans
1996-1997	Visiting Associate Professor, University of Toronto (Fall Semester)
1990-1995	Assistant Professor of Mathematics, University of New Orleans
1989-1990	Lecturer of Statistics, University of Connecticut

MAJOR STATISTICAL CONSULTING EXPERIENCE:

23. United States District Court, Middle District of Louisiana, Albert Woodfox v. BURL CAIN, *Warden of the Louisiana State Penitentiary*, ET AL., Civil Action; Contact person: Richard A. Curry, McGlinchey Stafford PLLC. Assisted the Office of the Attorney General of Louisiana related to a jury selection matter.
Duration: September 2011- August 2013.
Extent of Involvement: Submitted two expert reports; Deposed; Testified.

22. United States District Court EDLA, U.S. v. Khlgatian, et al, Criminal Docket Number 11-105 "I"; Contact person: Patrice Sullivan, Assistant United States Attorney. Assisted a federal agency and the Office of the AUSA; sampling of the patient charts; statistical comparisons with peers.
Duration: February 2012- December 2012.
Extent of Involvement: Submitted two expert reports.

21. United States District Court, Eastern District of Louisiana, Diamond Young, et al. v. United States of America, C.A. No. 11-2438, Section "H" (5); Civil Action; Contact person: Byard "Peck" Edwards and Donald W. Price.
Duration: April 2012- December 2012.
Extent of Involvement: Submitted an expert report.

20. Statistical Consultant: Textron Marine & Land Systems; Provided statistical expertise related to product reliability/testing/sampling and quality control; Contact person: James Stewart, ASV Program Director.
Duration: September 2010- January 2011.
Extent of Involvement: Submitted an expert report.

19. United States District Court, St. Tammany Parish Hospital. vs. Ace American Ins. Co. and Trinity Marine Products, Inc. (and several other related cases); Civil Action; Contact person: Amber Watt.
Duration: March 2010- March 2012.
Extent of Involvement: Submitted several expert reports; Deposed.

18. United States District Court, Eastern District of Louisiana, Malcolm Louis LeBlanc, et al. vs. Chevron USA Inc., et al.; Civil Action; Contact person: Eric Williams.
Duration: October 2008- July 2010.
Extent of Involvement: Submitted an expert report; Deposed.

17. United States District Court, 27th Judicial District, Opelousas, Charles C. Foti, Jr., et al. vs. Janssen Pharmaceutica, et al.; Civil Action; Contact person: Judge Donald Hebert. Served as the *court appointed Statistical Expert* to assist the court in a complex litigation matter.
Duration: August 2008- July 2010.

16. GCR, New Orleans and Barrios, Kingsdorf & Casteix, L.L.P.; *Statistical Consultant*; Provided statistical expertise to GCR in statistical analysis of CDW related matter; Contact person: Mr. Greg Rigamer, CEO, GCR, New Orleans.
Duration: January 2010- March 2010.
Extent of Involvement: Submitted expert report.

15. United States District Court, 24th Judicial District, Parish of Jefferson, Warren Lester, et al. vs. Exxon Mobil Corporation, et al.; Civil Action; Contact person: Timothy J. Falcon.
Duration: March 2008- May 2010;
Extent of Involvement: Assisted the attorneys and other experts; Submitted expert reports; Deposed twice.

14. Medicare Matter. Contact persons: Charles Taylor and Jacqueline Griffith (Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P.
Duration: October 2009- December 2009.
Extent of Involvement: Submitted an expert report; Testified.

13. United States District Court, St. Bernard Parish, Mumphrey v. Chalmette Medical Center; Civil Action; Contact persons: Susannah McKinney and Katie Wasik.
Duration: October 2008- November 2008.
Extent of Involvement: Submitted an expert report; Deposed; Testified.

12. GCR, New Orleans; *Statistical Consultant*; Provided statistical expertise to GCR in designing polls & analyzing the poll results for the state elections in 2007; Contact person: Mr. Greg Rigamer, CEO, GCR, New Orleans.
Duration: May 2007- October 2007.

11. United States District Court, 19th Judicial District, Parish of East Baton Rouge, Patrick J. Cunningham, et al. vs. IBM Corp.; Civil Action; Contact persons: Charles Hamilton and Michael Allweiss
Duration: December 2006- August 2007;
Extent of Involvement: Assisted the attorneys and other experts; wrote over 25 internal reports related to statistical computations and interpretation of results.

10. UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA; Provided statistical expertise in a jury selection matter; Wrote an expert report/Affidavit; Contact person: Carol L. Michel, Assistant United States Attorney, Eastern District of Louisiana.
Duration: May 2006- August 2006;

9. United States District Court, Eastern District of Texas, June Pryor Avance, et al. vs. Kerr-McGee Chemical LLC; Civil Action; *Statistical Expert*; Wrote three expert reports/Affidavits on statistical projections; Contact persons: Eric Williams and Glenn McGovern.
Duration: January 2005- July 2007;
Extent of Involvement: Deposed.

8. United States District Court, Down South Entertainment versus SMG; Civil Action; *Statistical estimation of crowd for Easter Jam*; Wrote three expert reports on statistical projections and the reliability of projections;
Duration: December 2003- May 2005;
Extent of Involvement: Deposed twice and testified in the court as an expert witness.

7. Naval Oceanographic Center (US Navy), Mississippi; *statistical guidance to update their methods of data collection and data storage, statistical algorithms to discard the noise and save only the relevant data*. Contact person: Mr. Glenn Carson. Duration: May 1998- March 2002.

6. United States District Court, Bank of Louisiana versus Kenwin Shops Inc.; Civil Action; *Wrote two expert reports on statistical analysis related to Bankruptcy of a BOL's client*;
Duration: May 1999- December 1999; Extent of Involvement: Deposed.

5. Jefferson Parish Public Schools; *As the statistician for the court appointed expert witness:* designed a survey of schools under Jefferson Parish Public Schools, assisted in statistical projections reported to the court.
Duration: August 1998- January 1999.

4. Lifemark Hospitals of Louisiana (Kenner Regional Medical Center); *Statistical sampling of patient charts*; Wrote three expert reports on statistical analysis/ sampling of the patient charts;
Duration: August 1996 – August 1997; Extent of Involvement: Deposed.

3. KPMG New Orleans; *Sample size determination, Designed and Analyzed samples of patient charts/drug usage to estimate total drug cost for the Tenet group of Hospitals/Lifemark Hospitals*; Wrote two expert reports on statistical analysis;
Duration: August 1994 – December 1995.

2. USDA, Department of Forestry, Louisiana: *Statistical assistance to USDA in data collection, designing and modeling*, Models used: Time-Series Models (for forecasting; Both Time Domain--ARIMA MODELS-- and Frequency Domain models).
Duration: August 1991- December 1994.

1. NASA Stennis Space Center, Mississippi: *Statistical Design and Analysis of the Rocket Seal Configuration Tester*, assisted NASA with the statistical issues related to the design of experiments and performance evaluation of the rocket seals.
Duration: August 1994-December 1995.

CURRENT EDITORIAL SERVICE:

Editor (Statistical Science): AJMMS (American Journal of Mathematical and Management Sciences), 2009-2013.
Associate Editor: Sequential Analysis, 2003-present.
Associate Editor: Journal of Combinatorics, Information and System Sciences, 2003-present.
Associate Editor: Journal of the Indian Society of Agricultural Statistics, 2009-present.
Associate Editor: Statistical Methodology, 2010-present.
Associate Editor: AJMMS (American Journal of Mathematical and Management Sciences), 2013-present.

SCHOLARLY/PROFESSIONAL ACTIVITIES:

President, Louisiana Chapter of American Statistical Association: 1994-1995.
Vice-President, Louisiana Chapter of American Statistical Association: 1993-1994.
Secretary, Louisiana Chapter of American Statistical Association: 1995-1996.
Reviewer: Journal of Statistical Planning and Inference, Sequential Analysis, Metrika, Communications in statistics, Statistics and Decisions, and others.
Member: Institute of Mathematical Statistics (IMS), Life member of the Forum for Interdisciplinary Mathematics.
Selection Committee Chair: Abraham Wald Prize in Sequential Analysis for Best Paper: Sequential Analysis Journal.

The first prize was awarded at JSM, 2005. Also, chaired the international selection committee in the years 2006, 2007, 2008, 2009, 2010, and 2011.
Guest Editor: Special Volume of *AJMMS* (American Journal of Mathematical and Management Sciences). Co-edited a special volume of *AJMMS* related to my research area of Selection and Ranking/MCP.
Symposium Organizer: I co-organized "Symposium on **Ranking and Selection Methodologies – Multiple Comparison Procedures**". The symposium was held during the ***Pre-ICM International Convention on Mathematical Sciences***, University of Delhi, December, 2008.
Symposium Organizer: I co-organized a symposium at the Auburn University (December 2005) in my research area of Selection and Ranking/MCP. I also chaired the symposium. The symposium was held during the SCMA 2005/FIM XII Conference.

RESEARCH PUBLICATIONS

Scholarly books:
(i.) *Multistage Selection and Ranking Procedures: Second-Order Asymptotics*, Marcel Dekker, Inc., ISBN No.: 0-8247-9078-2, (with N. Mukhopadhyay), 1994.

Refereed Scholarly book chapters:
(i.) On an improved accelerated sequential methodology with applications in selection and ranking, *Frontiers in Probability and Statistics*, Editors: S.P. Mukherjee, et al., 250-259, 1998, (with N. Mukhopadhyay).

(ii). Applications of Sequential Tests to Target Tracking by Multiple Models, *Applied Sequential Methodologies*, Marcel Dekker, edited by N. Mukhopadhyay, et al., 219-247, 2004, (with X. Rong Li).

As Guest Editor of a Journal's Special Issue:

Co-edited a Special Volume of *AJMMS* (American Journal of Mathematical and Management Sciences) in my research area: RANKING AND SELECTION AND MULTIPLE COMPARISON PROCEDURES. American Journal of Mathematical and Management Sciences, Volume 29 (2009), Nos. 1 & 2, 294 pages.

Refereed Publications

24. Discussion on "Sequential Estimation for Time Series Models" by T. N. Sriram and Ross Iaci, *Sequential Analysis*, **33**(02), pp. 186 – 189, 2014.

23. *On Two-stage comparisons with a control under heteroscedastic normal distributions*, Methodology and Computing in Applied Probability, Volume 14, Number 3, Pages 501-522, 2012 (with N. Mukhopadhyay).

22. Second-Order Asymptotics of a Fine-Tuned Unbalanced Purely Sequential Procedure For The Partition Problem, ***Journal of Combinatorics, Information and System Sciences, vol. 36, 233-248, 2011.***

21. Discussion on "Two-Stage Procedures for High-Dimensional Data" by Makoto Aoshima and Kazuyoshi Yata, *Sequential Analysis*, **30**(04), pp. 429 – 431, 2011.

20. On Approximate Optimality of the Sample Size for the Partition Problem, Communications in Statistics - Theory and Methods, 38:16, 3148 — 3157, 2009 (with Y. Wu).

19. *Discussion on "A Hybrid Selection and Testing Procedure with Curtailment" by Elena M. Buzaianu and Pinyuen Chen*, Sequential Analysis, 28:1, 38-40, 2009.

18. *A two-stage procedure with elimination for partitioning a set of normal populations with respect to a control*, Sequential Analysis, 25, 297-310, 2006.

17. On unbalanced multistage methodologies for the partition problem, *Proceedings of the International Sri Lankan Statistical Conference: Visions of Futuristic Methodologies*, 447-466, 2004 (with Y. Wu).

16. *Predicting multivariate response in linear regression model*, Commun. in Statistics, Simulation & Computation, Vol. 32, No. 2, 389-409, 2003 (with M. Srivastava).

15. *Multistage methodologies for comparing several treatments with a control*, Journal of Statistical Planning and Inference, 100, No. 2, 209-220, (with N. Mukhopadhyay), 2002.

14. *A sequential procedure with elimination for partitioning a set of normal populations having a common unknown variance*, Sequential Analysis, Vol. 20 (4), 279-292, 2001.

13. *Estimation of coating time in the magnetically assisted impaction coating process*, Journal of Powder Technology I, 121, 159-167, 2001(P. Singh, T.K.S. Solanky, R. Mudryy, R. Pfeffer, and R. Dave).

12. *Power comparison of some tests for detecting a change in the multivariate mean*, Commun. in Statistics, Simulation & Computation, Volume 30, Issue 1, 19--36 (2001) (with M. Srivastava and A.K. Sen).

11. *Convection and local acceleration dominated regimes in Lennard-Jones liquids*, Physics Letters A, 266, 11-18 (2000) (with P. Singh).

10. *A Robust Methodology for selecting the smaller variance*, Journal of Nonparametric Statistics, Vol. 11, 361-376 (1999) (with N. Mukhopadhyay and A. Padmanabhan).

9. *Multistage methodologies for fixed-width simultaneous confidence intervals for all pairwise comparisons*, Journal of Statistical planning and Inference, 73, 163-176 (1998) (with N. Mukhopadhyay).

8. *On estimating the reliability after sequentially estimating the mean: the exponential case*, Metrika, 45(3), 235-252 (1997) (with N. Mukhopadhyay and A. Padmanabhan).

7. *Accuracy of formula-derived Creatinine clearance in paraplegics subjects*, Clin. Nephrol., 47(4), 237-242 (1997) (with V. Thaakur, E. Reisin, M. Solomonow, R. Baratta, E. Anguilar, R. Best, R. D'Ambrosia).

6. *Estimation After Sequential Selection and Ranking*, Metrika, 45(2), 95-106 (1997) (with N. Mukhopadhyay).

5. *A nonparametric accelerated sequential procedure for selecting the largest center of symmetry*, Journal of Nonparametric Statistics, 3, 155-166 (1993) (with N. Mukhopadhyay).

4. *Accelerated sequential procedure for selecting the best exponential population*, Journal of Statistical planning and Inference, 32, (1992), 347-361 (with N. Mukhopadhyay).

3. *Accelerated sequential procedure for selecting the largest mean*, Sequential Analysis, vol. 11, (1992), 137-148 (with N. Mukhopadhyay).

2. *Improved sequential and accelerated sequential procedures for estimating the scale parameter in a uniform distribution*, Sequential Analysis, vol. 10, (1991), 235-245 (with L. Kuo and N. Mukhopadhyay).

1. *Second order properties of accelerated stopping times with applications in sequential estimation*, Sequential Analysis, vol. 10, (1991), 99-123 (with N. Mukhopadhyay).

Other Publications

(i.) Proceedings of The second International Workshop in Sequential Methodologies (IWSM 2009): Multistage Methodologies for Partitioning a Set of Exponential Populations, 4 pages, 2009.

(ii.) Proceedings of The 56th Session of the International Statistical Institute (ISI 2007): On Optimality of the Sample Size for the Partition Problem (jointly with Yuefeng Wu), pages 2033-2037, 2007.
(iii). *Selecting the Best Component in a Multivariate Normal Population*, (with N. Mukhopadhyay).

- Presented at the Joint Statistical Meetings, San Francisco, August 1993.
- Abstract in IMS Bulletin, Vol. 22, No. 3, page 333, 1993.
- Article appears in Chapter 6, *Multistage Selection and Ranking Procedures: Second-Order Asymptotics*, Marcel Dekker, Inc., 1994, page 266-280.

(iv.) *On Asymptotic Second-Order Properties of Selecting the t-best Exponential Populations,* (with N. Mukhopadhyay).

- Presented at the Joint Statistical Meetings, Boston, August 1992.
- Abstract in IMS Bulletin, Vol. 23, No. 3, page 339, 1992.
- Article appears as a separate section in *Multistage Selection and Ranking Procedures: Second-Order Asymptotics*, Marcel Dekker, Inc., 1994, Section 4.9, page 198-208.

(v.) *On Asymptotic Second-Order Properties of Selecting the t-best Normal Populations*, (with N. Mukhopadhyay).

- Presented at the Joint Statistical Meetings, Atlanta, August 1991.
- Abstract in IMS Bulletin, Vol. 20, No. 3, page 335, 1991.
- Article appears as a separate section in *Multistage Selection and Ranking Procedures: Second-Order Asymptotics*, Marcel Dekker, Inc., 1994, Section 3.9, page 117-141.

Grants and Contracts as Principal Investigator:

{19.} L.E.Q.S.F. Enhancement Grant, $15,000.00, 2011-2013, *Continuation of Statistical Consulting Education at UNO* [Linxiong Li].
{18.} UNO SCoRE award, $15,000, 2011.
{17.} L.E.Q.S.F. Enhancement Grant, $20,000.00, 2008-2010, *Enhancement of Industry Oriented Statistical Education at UNO: Post Katrina Years* [Linxiong Li].
{16.} L.E.Q.S.F. Enhancement Grant, $27,500.00, 2005-2007, Continuation of: *Enhancement of Industry Oriented Statistical Education at UNO* [with Terry Watkins and Linxiong Li].
{15.} L.E.Q.S.F. Enhancement Grant, $35,874.00, 2002-2004, *Enhancement of Industry Oriented Statistical Education at UNO.* [The proposal was ranked first among all the proposals in the category. With Terry Watkins, Linxiong Li, and Zhide Fang].
{14.} AFCEA Silicon Bayou Chapter Award, $300, 2002-2003, for purchasing classroom supplies for the mathematics department.
{13.} National Science Foundation (NSF), $219,900, 2000-2002, *UNOMACSS: A Scholarship Program in the Mathematical and Computer Sciences* [with A. DePano of Computer Science Department]. It provided scholarship to 20 mathematics and 20 computer science students for two years.
{12.} L.E.Q.S.F. Enhancement Grant, $172,512, 1996-1998, *Statistics and Applied Mathematics Laboratory* [with Lew Lefton and Adam Harrison].
{11.} {L.E.Q.S.F. Research Grant}, $75,325, 1995-1998, *Robustness and Implementability of Various Multistage Selection and Ranking Procedures.*
{10.} NASA, Graduate Student Research Program, $64,000, 1994-1996, *Statistical Analysis of Rocket Seal Tester.*

{9.} U.S.D.A. Research Grant, $20,000, 1994-1998, Statistical Assistance to USDA in EPA Projects (with Terry A. Watkins).
{8.} Institute of Mathematical Statistics, $400, 1994, *Travel Award to present a paper at the annual meeting in Chapel Hill, North Carolina.*
{7.} UNO Research Support Award, $2,000, 1994-1995.
{6.} U.S.D.A. Research Grant, $10,000, 1993-1994 , Statistical Assistance to USDA (with Terry A. Watkins).
{5.} L.E.Q.S.F. Research Grant, $14,583, 1992-1993, Permutationally Invariant Change point Estimation, (with Terry A. Watkins).
{4.} Institute of Mathematical Statistics, $800, 1990, Travel Award to present a paper at the annual meeting in Uppsala, Sweden.
{3.} UNO faculty summer scholar award, $3667, summer 1991.
{2.} UNO Research Council Grant}, $1330, 7/91--6/92.
{1.} UNO Faculty Development Award, $1,600, June-December 1993.

PROFESSIONAL PRESENTATIONS

{49.} A Note on Partitioning Exponential Populations, **invited talk**, IWSM 2013, University Of Georgia, Athens, Georgia, July, 2013.
{48.} Nonparametric sequential procedure for partitioning a set of populations with respect to a standard or control, **invited talk**, International Conference On Statistics and Informatics in Agricultural Research, New Delhi, India, December, 2012.
{47.} On a generalization of the Partition Problem, **invited talk**, IMSCT 2012 -- FIM XXI, Punjab University, India, December, 2012.
{46.} Robustness of the fine-tuned Purely Sequential procedure for the unbalanced partition problem, **invited talk**, STATISTICS 2011 CANADA and IMST 2011-FIM XX, Monteal, July, 2011.
{45.} On a generalization of the Partition Problem, **invited talk**, International Workshop on Sequential Methods, Stanford University, June, 2011 (with Jie Zhou).
{44.} Use and Misuse of the ANOVA methodology, *Mathematical Association of America*, Florida Chapter Meeting, University of West Florida, Pensacola, Florida, November, 2010.
{43.} Some Issues Related to the Partition Problem, **invited talk**, *50+ Years of Research: Mini-Conference in Honor of Professor Zacks*, Binghamton, New York, December, 2009.
{42.} Multistage Methodologies for Partitioning a Set of Exponential Populations, **invited talk**, IWSM 2009, Troyes, France, June, 2009.
{41.} SQA Editor's Round Table, **Plenary Session**, IWSM 2009, Troyes, France, June, 2009(with Marie Hušková, N. Mukhopadhyay, Alexander Tartakovsky, and S. Zacks).
{40.} Multistage Methodologies for Partitioning a Set of Several Populations With Respect to a Standard or a Control, **SQA Editors Special Invited Talk**, Joint Statistical Meeting, Denver, Colorado, August, 2008.
{39.} A Nonparametric Purely Sequential Procedure For the Partition Problem, **invited talk**, **Dudewicz Honor Conference**, Syracuse, New York, July, 2008.
{38.} On Approximate Optimality of the Unbalanced Sequential Procedure for the Partition Problem, **invited talk**, IISA Conference, Connecticut, May, 2008 (with Y. Wu).
{37.} The role of Statistics in Clinical Trials, Invited talk for the students in the *Honors Program, University of New Orleans*, **invited talk**, April, 2008.
{36.} On Optimality of the Sample Size for the Partition Problem, ISI 2007 Conference, Lisbon, Portugal, August, 2007 (with Y. Wu).
{35.} A Nonparametric Methodology for the Partition Problem, **invited talk**, IWSM 2007, Auburn, Alabama, July, 2007.
{34.} SQA Editor's Round Table, **invited participant**, IWSM 2007, Auburn, Alabama, July, 2007(with M. Aoshima, M. Carpenter, N. Mukhopadhyay, and S. Zacks).
{33.} Multiple Comparison Procedures in Statistics: A Distribution Free Approach, Department of Electrical Engineering, University of New Orleans, April, 2007.
{32.} The problem of selection and Ranking: An introduction and some current research, **invited talk**, Department of mathematics, IIT Delhi, January, 2007.

{31.} An Efficient Design For Partitioning a set of Populations With Respect to a Control, *International Conference on Statistics and Informatics,* **invited talk**, Delhi, India, December, 2006.
{30.} Efficient Designs for the Partition Problem, Department of Mathematics, Department of Mathematics, *University of Louisiana, Lafayette*, **invited talk**, September, 2005.
{29.} A note on the Efficiency of Some Designs for the Partition Problem, *International conference on recent advances in statistics*, **invited talk**, IIT Kanpur, India, January, 2005.
{28.} On an improved accelerated sequential methodology with applications in selection and ranking, *International Sri Lankan Statistical Conference: Visions of Futuristic Methodologies*, **invited talk**, Kandy, Sri Lanka, December, 2004.
{27.} Implementation and other issues related to the partition problem, *Punjab University, Chandigarh*, **invited talk**, India, December, 2004.
{26.} Robustness of methodologies for the partition problem, *University of Connecticut, Storrs*, Connecticut, **invited talk**, October, 2004.
{25.} A two stage procedure for the partition problem, *IISA 2004 Conference*, **invited talk**, Athens, Georgia, May, 2004.
{24.} A two stage procedure with elimination, *Department of Electrical Engineering, UNO*, September, 2003.
{23.} On combining subset selection and indifference zone approaches, *International conference on Bayesian Statistics*, LaManga, Spain, May, 2003.
{22.} Robustness of multistage procedures, **invited talk**, *Ninth International conference on Statistics, Combinatorics and related areas*, Allahabad, India, December, 2002.
{21.} A sequential procedure with elimination, *International conference on statistical inference and reliability*, **invited talk**, Chandigarh, India, December, 2001.
{20.} On generalizing the partition problem for the normal population, **invited talk**, *Joint Statistical Meeting of IISA, etc.*, New Delhi, India, December, 2000.
{19.}On Robustness of the partition problem for the normal population, *Sixth Conference of the Forum for Interdisciplinary Mathematics: International Conference on Combinatorics, Information Theory and Statistics*, University of South Alabama, Mobile, December, 1999. Maryland, August, 1999.
{18.} On partitioning a set of normal populations with respect to a control, **Invited Talk**, *Fifth Conference of the Forum for Interdisciplinary Mathematics: International Conference on Combinatorics, Information Theory and Statistics*, University of Mysore, India, December, 1998.
{17.} Three-Stage and accelerated sequential methodologies for comparing several treatments with a control, **Invited Talk**, *Third Conference of the Forum for Interdisciplinary Mathematics: International Conference on Combinatorics, Information Theory and Statistics*, University of Southern Maine, Portland, Maine, July, 1997 (with N. Mukhopadhyay).
{16.} Research in Statistics, Invited talk for the students in the *Honors Program, University of New Orleans*, **invited talk**, March, 1997.
{15.} Few generalizations to the selection and Ranking Problem, *Department of Statistics, University of Toronto*, November, 1996 (with N. Mukhopadhyay).
{14.} Multistage methodologies for fixed-width simultaneous confidence intervals for all pairwise comparisons, *Indian Science Congress Meeting*, Patiala, India, January, 1996 (with N. Mukhopadhyay).
{13.} On estimating the reliability after sequentially estimating the mean: the exponential case, *Annual Joint Statistical Meetings of ASA, IMS etc.*, Orlando, August, 1995 (with N. Mukhopadhyay and A. Padmanabhan).
{12.} Multistage methodologies for fixed-width simultaneous confidence intervals for all pairwise comparisons, *Bose Memorial Conference, Colorado State University*, Colorado, June, 1995 (with N. Mukhopadhyay).
{11.} On an Improved Accelerated Sequential Methodology With Applications in Selection and Ranking, *Annual Joint Statistical Meetings of ASA, IMS etc.*, Toronto, August, 1994 (with N. Mukhopadhyay).
{10.} Accelerated Sequential Estimation of the Largest Location Parameter in the Normal and Negative Exponential Cases, *Annual Meeting of Institute of Mathematical Statistics*, North Carolina, June, 1994 (with N. Mukhopadhyay).
{9.} Selecting the Best Component in a Multivariate Normal Population, Annual Joint Statistical Meetings of ASA, IMS etc., San Francisco, August, 1993 (with N. Mukhopadhyay).
{8.} A Note on Sequential Selection and Ranking, *Department of Mathematics, I.I.T. Delhi*, India, June, 1993.
{7.} On Asymptotic Second-Order Properties of Selecting the t-best Exponential Populations, *Annual Joint Statistical Meetings of ASA, IMS etc.*, Boston, August, 1992 (with N. Mukhopadhyay).
{6.} On Asymptotic Second-Order Properties of Selecting the t-best Normal Populations, *Annual Joint Statistical Meetings of ASA, IMS etc.*, Atlanta, August, 1991 (with N. Mukhopadhyay).

{5.} Accelerated Sequential Procedure for Selecting the Largest Mean, *Department of Statistics, University of Southwestern Louisiana,* April, 1991 (with N. Mukhopadhyay).
{4.} Nonparametric Accelerated Sequential Procedure for Selecting the Best Population, *2nd World Congress of The Bernoulli Society for Mathematical Statistics and Probability and Annual meeting of IMS, Uppsala, Sweden*, August, 1990 (with N. Mukhopadhyay).
{3.} A Computational Based Approach to Selection and Ranking Problem, *22nd Symposium on the Interface: Computing Science and Statistics,* Michigan State University, May, 1990 (with N. Mukhopadhyay).
{2.} A note on Sequential Selection and Ranking Procedures, *Department of Statistics, University of Connecticut*, April, 1990 (with N. Mukhopadhyay).
{1.} Computationally Intensive Accelerated Sequential Procedure for Selecting the Best Exponential Population, *Fourth Annual New England Statistics Symposium*, Lowell University, March, 1990 (with N. Mukhopadhyay).

UNIVERSITY SERVICE (University of New Orleans)
University Service:
President's Executive Committee/Cabinet: Member, 2008-09.
Policy Committee: Chair, 2008-09.
Strategic Planning Committee (The Strategic Plan 2009-2012): Committee Member.
Policy Committee: Represented the College of Sciences, 2006-2009.
University Senate: 2006-2009.
Provost Search Committee: Member, 2008-09.
Dean Search Committee: Member, 2009-10.
First Year Initiatives (FYI): Committee member, 2009-present.
University Committee: Committee on University Admissions, member 2003-2006, Committee Chair 2005-2006, member 2006-present.
Provost Search Committee: Member, 2014-15.
Faculty Governance Committee: Member, March 2014-present.

College Service:

College of Sciences, Dean Search Committee, 2009-10.
Member, College of Sciences Teaching Award Committee, 2002-2008.
College of Sciences Student Retention Committee, Chair, 2011-12.
Department Service:
Department Chair: Fall 2008—present.
Member of Several departmental Committees such as Computer Committee; Graduate Advisory; Courses and Curricula, etc: 1990-present.

TEACHING AWARDS

(i). Seraphia D. Leyda University Teaching Fellow, Awarded in year 2009.
(ii). Recognized for teaching under the University of New Orleans's "My Favorite Professor" program in 2005

Other Activities Related to Teaching and MS/PhD Committee Memberships
(i). Master's thesis supervision for 2 students.
(ii). Major Professor for over 40 Masters Students with non-thesis Masters Degree program.
(iii). PhD Thesis committee member for 12 students.
(iv). Program Development: Added 6 graduate courses in statistics within a year of joining UNO in 1990. These courses have allowed UNO to have a complete masters program in statistics. The program is gaining reputation and some of our graduates have moved on and received PhD's from reputed programs. Many of these schools have accepted multiple students from our MS program in statistics.

Major Areas of Research Interest
Statistical Consulting, Statistical Sampling, Statistical Modeling, Sequential Analysis, Selection and Ranking, Change point Problem, Statistical Computing, Biostatistics, and Biomedical applications.

DX-779

EXHIBIT "B"

Louisiana's County Characteristics Resident Population Estimates

PARISH	Total Population	Women (15-44 years)	All Women
Acadia Parish	62,204	12,024	31,909
Allen Parish	25,537	3,979	11,140
Ascension Parish	114,393	23,939	57,936
Assumption Parish	23,187	4,449	11,825
Avoyelles Parish	41,299	7,442	20,645
Beauregard Parish	36,167	6,603	17,669
Bienville Parish	13,981	2,452	7,293
Bossier Parish	123,823	25,612	62,477
Caddo Parish	254,887	51,898	133,766
Calcasieu Parish	195,296	39,113	99,991
Caldwell Parish	9,989	1,701	4,881
Cameron Parish	6,744	1,222	3,406
Catahoula Parish	10,238	1,650	4,807
Claiborne Parish	16,650	2,409	7,280
Concordia Parish	20,442	3,510	10,121
De Soto Parish	27,083	5,066	13,984
East Baton Rouge Parish	445,227	101,705	231,649
East Carroll Parish	7,529	1,218	3,466
East Feliciana Parish	19,728	3,123	9,135
Evangeline Parish	33,578	6,103	16,586
Franklin Parish	20,571	3,607	10,518
Grant Parish	22,030	3,537	9,655
Iberia Parish	73,878	14,300	37,719
Iberville Parish	33,367	6,353	16,273
Jackson Parish	16,112	2,682	7,861
Jefferson Davis Parish	31,301	5,847	16,060
Jefferson Parish	434,767	84,875	223,656
La Salle Parish	14,777	2,573	7,171
Lafayette Parish	230,845	50,576	117,984
Lafourche Parish	97,141	19,343	49,282
Lincoln Parish	47,414	12,228	24,357
Livingston Parish	134,053	27,927	67,606
Madison Parish	11,927	2,424	6,031
Morehouse Parish	27,057	4,915	14,068
Natchitoches Parish	39,138	8,691	20,459
Orleans Parish	378,715	87,406	197,021

DX-780

Ouachita Parish	156,220	33,068	81,344
Plaquemines Parish	23,550	4,738	11,763
Pointe Coupee Parish	22,499	3,926	11,686
Rapides Parish	132,723	25,699	68,613
Red River Parish	8,894	1,582	4,590
Richland Parish	20,857	4,032	10,845
Sabine Parish	24,235	4,223	12,161
St. Bernard Parish	43,482	9,618	21,933
St. Charles Parish	52,617	10,439	26,580
St. Helena Parish	10,875	2,013	5,527
St. James Parish	21,752	4,058	11,183
St. John the Baptist Parish	43,761	8,575	22,261
St. Landry Parish	83,454	15,896	43,447
St. Martin Parish	52,936	10,296	26,865
St. Mary Parish	53,543	10,058	27,038
St. Tammany Parish	242,333	44,986	124,561
Tangipahoa Parish	125,412	26,696	64,597
Tensas Parish	4,908	745	2,512
Terrebonne Parish	112,749	22,508	57,037
Union Parish	22,344	3,777	11,319
Vermilion Parish	59,253	11,477	30,428
Vernon Parish	52,606	11,034	24,936
Washington Parish	46,419	8,320	23,368
Webster Parish	40,678	7,321	20,852
West Baton Rouge Parish	24,573	4,949	12,454
West Carroll Parish	11,465	1,954	5,715
West Feliciana Parish	15,444	1,866	5,305
Winn Parish	14,813	2,363	6,930

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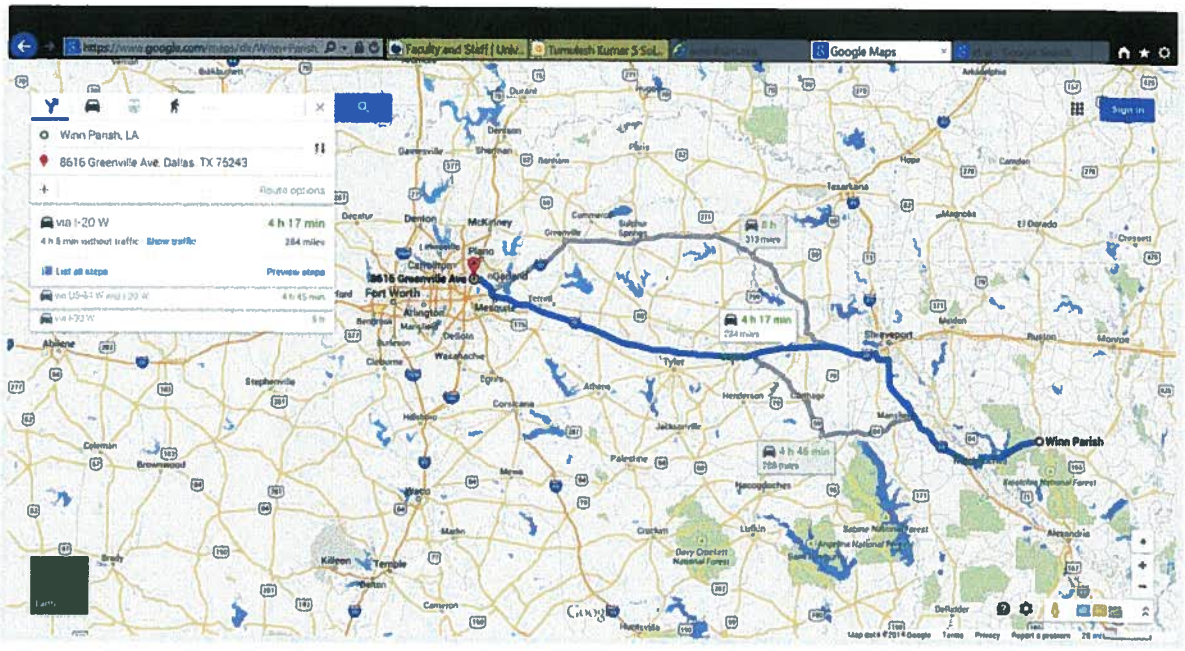
EXHIBIT "C"

A screenshot of the webpage displaying the driving distance between Winn Parish, LA, and Southwestern Women's Surgery Center located at 8616 Greenville Ave, Dallas, TX 75243.



Tab D

Testimony of Dr. Tumulesh Solanky (Doc. 193) (excerpts)

IT WAS -- IT DID NOT GO THROUGH CLINICAL TRIALS BY FOOD AND DRUG ADMINISTRATION AND HOW IT HAS IMPACTED THE CHILDREN.

AND QUITE A BIT OF HOW IT HAS IMPACTED THE CHILDREN IN LOUISIANA IS A STATISTICAL MATTER, MEANING YOU COLLECT THE DATA, HOW THE DRUG HAS BEEN DISPENSED, HOW THESE CHILDREN HAVE SUFFERED. BOTH THE SIDES HAD A NUMBER OF STATISTICIANS. CHARLES FOTI HAD HIS STATISTICAL EXPERTS, JANSSEN HAD THEIR OWN STATISTICAL EXPERTS. AND MY ROLE WAS TO HELP THE COURT WITH UNDERSTANDING WHAT STATISTICAL RESULTS ARE BEING PRESENTED TO THE COURT BY THE TWO SIDES, WHICH RESULTS ARE RELIABLE, WHICH RESULTS ARE THERE JUST TO CONFUSE THE JUDGE, THAT SORT OF THING.

Q I SEE. THANK YOU. THANK YOU, DOCTOR. AND THE CASES -- JUST TO BE SURE. THE CASES IN WHICH YOU HAVE BEEN QUALIFIED AS AN EXPERT WITNESS ARE LISTED IN THESE PAGES IN YOUR CV; CORRECT?

A CORRECT.

Q OKAY. LET'S SHIFT SUBJECTS. DR. SOLANKY, HAVE YOU BEEN RETAINED BY THE DEFENDANT IN THIS MATTER TO PROVIDE AN EXPERT OPINION?

A YES.

Q ARE YOU BEING COMPENSATED FOR THAT OPINION BY THE DEFENDANT?

A YES.

Q AT WHAT RATE?

A MY HOURLY RATE IS $200 AN HOUR.

Q WHAT IS YOUR UNDERSTANDING OF THE SUBJECT MATTER OF THIS LITIGATION?

A THE SUBJECT MATTER OF THIS LITIGATION IS, LAST YEAR THE LOUISIANA LEGISLATORS PASSED A LAW, I BELIEVE IT IS REFERRED TO AS ACT 620, UNDER WHICH THE ABORTION PROVIDING PHYSICIANS IN ABORTION CLINICS MUST HAVE ACTIVE ADMITTING PRIVILEGES WITHIN 30 MILES OF THE CLINIC AND WHAT IMPACT THIS IS HAVING ON -- IN THE STATE OF LOUISIANA.

Q AND WHAT IS THE NATURE OF THE EXPERT OPINION YOU'VE BEEN ASKED BY THE DEFENDANT TO PROVIDE IN THIS MATTER?

A THE COUNSEL HAD ASKED ME TO LOOK AT THE ABORTION CLINICS IN LOUISIANA WHERE LOUISIANA WOMEN GO TO SEEK ABORTIONS AND WHAT IMPACT WILL THIS HAVE UNDER VARIOUS HYPOTHETICAL OR OTHER SCENARIOS IF SOME OF THE ABORTION CLINICS CLOSED AND LIKE THAT.

Q AND YOU WERE ASKED SPECIFICALLY TO LOOK INTO WHAT ASPECT OF THIS --

A TO LOOK AT WHAT THE DRIVING DISTANCES WOULD BE TO THE NEAREST CLINIC.

Q THANK YOU. DOCTOR, I'D LIKE TO ASK YOU NOW ABOUT THE FACTS AND DATA YOU RELIED ON IN FORMING YOUR OPINION. I GUESS, FIRST OF ALL, DID YOU REVIEW SOME LITIGATION DOCUMENTS IN THIS CASE?

A I REVIEWED A NUMBER OF DOCUMENTS RELATED TO THIS,

AND I HAVE THOSE SUMMARIZED IN MY REPORT.

Q RIGHT. AND I'LL DRAW YOUR ATTENTION TO PARAGRAPH 5 OF YOUR REPORT ON PAGE 2. DO YOU SEE THAT?

A THAT'S -- THIS IS -- THIS SUMMARIZES THE DOCUMENTS THAT I REVIEWED.

Q RIGHT. THE LITIGATION DOCUMENTS THERE?

A CORRECT.

Q OKAY. NOW SOME OTHER FACTS. DID YOU CONSIDER THE LOCATION OF OUTPATIENT ABORTION CLINICS?

A YES, I DID.

Q AND IN WHAT CITIES AND STATES DID YOU CONSIDER THOSE CLINICS?

A I LOOKED AT THE ABORTION CLINICS IN LOUISIANA AND ABORTION CLINICS SURROUNDING LOUISIANA; IN TEXAS; MISSISSIPPI; MOBILE, ALABAMA.

Q AND HOW DID YOU IDENTIFY THE CLINICS THAT YOU CONSIDERED?

A THE CLINICS THAT ARE -- WHEN I READ ALL OF THESE DOCUMENTS THAT WE JUST REFERRED TO IN ITEM NO. 5, THE ABORTION CLINICS, THOSE FIVE ARE REFERRED TO IN THOSE DOCUMENTS.

Q I'M SORRY. THE FIVE LOUISIANA CLINICS?

A FIVE ABORTION -- LOUISIANA ABORTION CLINICS. SO THEY WERE MENTIONED IN THOSE REPORTS. AND THEN FOR OUTSIDE LOUISIANA, I DID SOME SEARCH ON MY OWN, SO WHAT ALL ABORTION CLINICS ARE AVAILABLE FOR LOUISIANA WOMEN. JUST PLAIN, SIMPLE

INTERNET SEARCH AND I CALLED THEM. I JUST PICKED UP THE PHONE -- THEY ALL PROVIDE YOU A PHONE NUMBER TO SEE IF THEY ARE OPERATING AND FUNCTIONAL OR NOT.

Q AND HOW DID YOU VERIFY THE LOCATIONS OF EACH OF THE CLINICS THAT YOU CONSIDERED FOR YOUR REPORT?

A INTERNET PROVIDES THEIR PHONE NUMBERS, THEIR LOCATIONS, THE DIRECTIONS, SO ALL OF THAT IS REALLY READILY AVAILABLE. FOR THE LOUISIANA CLINICS, I THINK THE ADDRESSES WERE EVEN AVAILABLE IN THE REPORTS.

Q OKAY. GREAT. THANK YOU.

A IN THOSE LITIGATION REPORTS.

Q THANK YOU. OKAY. LET'S TALK ABOUT SOME OF THE OTHER DATA. I WOULD REFER YOU TO PARAGRAPHS 9 THROUGH 12 OF YOUR EXPERT REPORT. THAT'S ON PAGE 5 OF YOUR REPORT, WHICH YOU MAY REFER TO IF YOU NEED TO?

A OKAY.

Q LET'S TALK FIRST ABOUT PARAGRAPH 9. DO YOU SEE THAT PARAGRAPH, DOCTOR?

A YES, I DO.

Q WHAT DATA DOES THAT PARAGRAPH DISCUSS?

A IN NUMBER 9 I'M REFERRING TO THE U.S. CENSUS DATA. NOW, U.S. CENSUS CONDUCTS A COMPLETE CENSUS EVERY TEN YEARS, SO THE LAST COMPLETE CENSUS WAS IN YEAR 2010. AND THAT IS THE DATA I'M TALKING ABOUT. SO LITERALLY, IN CENSUS, EVERY SINGLE PERSON IS COUNTED AND REPORTED AND THEY COLLECT A NUMBER OF

OTHER CHARACTERISTICS WHILE THEY COLLECT THIS DATA.

Q THANK YOU. LET'S LOOK AT PARAGRAPH 10 ON THE SAME PAGE. THERE YOU TALK ABOUT ANOTHER SET OF DATA. WHY DON'T YOU EXPLAIN THAT?

A IN NO. 9, I'M REFERRING TO THE COMPLETE CENSUS, WHICH WAS IN 2010. AND WHAT THE U.S. CENSUS BUREAU DOES IS -- TEN YEARS IS A LONG TIME, SO IF THE LAST CENSUS IS IN 2010, THE NEXT ONE WOULD BE IN 2020. WHAT U.S. CENSUS BUREAU DOES IS IT UPDATES THOSE ESTIMATES FOR THE IN-BETWEEN YEARS.

SO WHEN I WROTE THIS REPORT, THE MOST CURRENT DATA WHICH WAS AVAILABLE WAS FOR THE YEAR 2013, AND THAT'S WHAT I HAVE REFERRED TO HERE, "COUNTY CHARACTERISTICS RESIDENT POPULATION ESTIMATES." AND THAT'S THE NAME OF THE FILE. AND IT GIVES THE RESIDENT POPULATION BY AGE, SEX, RACE, AND SO ON. AND THAT DATA, I THINK, I HAVE SUMMARIZED IN THE REPORT AS WELL IN THE EXHIBIT -- EXHIBIT B OF THE REPORT.

Q VERY GOOD. THANK YOU. IN PARAGRAPH 11, COULD YOU TALK ABOUT THE DATA THAT THAT PARAGRAPH REFERS TO?

A NOW, IN NUMBER 9, I LOOKED AT --

Q NUMBER 11. I'M SORRY.

A NUMBER 11 -- LET ME START WITH NO. 9. IN NO. 9, I HAD ALL OF THE CENSUS. AND THEN IN NO. 10, WE ARE TALKING ABOUT 2013 ESTIMATES. IN NO. 11 I WANTED TO SEE WHAT WOMEN OF -- WOMEN OF WHAT AGE ACTUALLY GO OUT AND SEEK ABORTION. IN NO. 10, I HAD THE DATA AVAILABLE ON ALL WOMEN IN EACH PARISH,

IN EACH OF THE 64 PARISHES IN LOUISIANA, BUT THAT COULD BE A BIT SKEWED. THE CORRECT ITEM FOR ME TO LOOK AT WAS TO LOOK AT THE WOMEN OF REPRODUCTIVE AGE. AND BEFORE I COULD EVEN JUST ASSUME SOME NUMBERS, I LOOKED AT THIS ITOP DATA WHICH IS SUMMARIZED ON DHH'S WEBSITE AND I SAW LITERALLY NEARLY ALL, 99 POINT SOMETHING PERCENT OF THE WOMEN WHO SEEK ABORTION TEND TO BE BETWEEN THE AGES OF 15 TO 44 YEARS.

IN ITEM 11, I HAVE SUMMARIZED THEM BY THE YEAR. MEANING I THOUGHT IT WOULD BE MORE PRECISE THAT NOT ONLY I LOOK AT ALL OF THE WOMEN IN LOUISIANA BUT AS WELL I MIGHT LOOK AT THE WOMEN WHO ARE LIKELY TO SEEK ABORTION. THE SUBGROUP OF ALL WOMEN WHO ARE LIKELY TO SEEK ABORTION.

Q THANK YOU, DOCTOR. NOW, THE LAST ONE ON THIS POINT IS PARAGRAPH 12 OF YOUR REPORT. COULD YOU DESCRIBE THAT DATA?

A IN NO. 12, ON THIS -- IN THIS -- THE ESTIMATES WHICH I TALKED ABOUT, THEY GIVE YOU THE POPULATION OF WOMEN BY DIFFERENT AGE GROUPS. SO WHAT I'M TALKING ABOUT IN NO. 12 IS HOW DID I -- WHAT ALL COLUMNS I ADDED UP TO GET THE NUMBER OF WOMEN IN AGE GROUP OF 15 TO 44 YEARS.

Q I'M SORRY IF I MISSED THIS, DOCTOR. BUT WHAT'S THE SOURCE OF THE DATA --

A THE SOURCE OF THE DATA IS U.S. CENSUS BUREAU.

Q OKAY. IN PARAGRAPH 12 AS WELL?

A RIGHT. IN PARAGRAPH 12, U.S. CENSUS BUREAU PROVIDES THE NUMBER OF WOMEN OF DIFFERENT AGE GROUP. AND THEY HAVE

LISTED THEM BY CERTAIN CODES. THE CODES WHICH REFER TO THE AGE GROUP BETWEEN 15 TO 44 YEARS WERE THE CODES. AND THEY CALL THIS VARIABLE -- NAMED TO BE A-G-E, G-R-P, AGE GROUP I BELIEVE IT STANDS FOR. SO I ADDED THE VALUES OF 4 THROUGH 9 TO ADD AND ARRIVE AT THE NUMBER OF WOMEN IN THIS AGE GROUP OF 15 TO 44.

Q JUST TO BE CLEAR FOR THE RECORD, DOCTOR, WHERE DID YOU ACCESS THIS U.S. CENSUS DATA THAT YOU DISCUSS IN PARAGRAPHS 9, 10 AND 12?

A THE U.S. CENSUS BUREAU PROVIDES -- PUBLICIZES THIS DATA. AND THAT IS ONE OF THE JOBS OF THE U.S. CENSUS BUREAU DUTIES, TO MAKE THIS DATA READILY AVAILABLE TO ANYBODY WHO WANTS TO USE IT. IT'S ON THE WEBSITE OF THE U.S. CENSUS BUREAU.

Q THANK YOU, DOCTOR. THE NEXT KIND OF DATA I'D LIKE TO ASK YOU ABOUT -- OR I GUESS THIS IS MORE OF A CALCULATION. HOW DID YOU CALCULATE THE DRIVING DISTANCE FROM EACH PARISH TO VARIOUS ABORTION FACILITIES? COULD YOU DESCRIBE THE PROCESS THAT YOU USED FOR THE COURT?

A OKAY. CAN WE SCROLL JUST A BIT?

Q I'M SORRY. I'LL REFER YOU TO PARAGRAPH 13 OF YOUR REPORT ON PAGE 6.

A NOW, IN NO. 13, ITEM NO. 13, THE NEXT THING WHICH I DID WAS TO SEE HOW FAR A PARTICULAR ABORTION CLINIC IS FROM A PARISH. AND FOR THIS -- TO DETERMINE HOW FAR A PARTICULAR

CLINIC IS, I DID WHAT I DO EVEN OTHERWISE. IF I NEED TO GO SOMEPLACE, I GO TO GOOGLE OR ONE OF THESE WEBSITES AND I TYPE IN THE ADDRESS AND THEN THAT IS THE INFORMATION I USED.

SO I USED GOOGLE.COM BY TYPING IN THE ADDRESS OF THE FACILITY AND THE NAME OF THE PARISH, GOOGLE WAS ABLE TO PROVIDE ME HOW FAR A PARTICULAR PARISH IS FROM A PARTICULAR ABORTION FACILITY.

Q AND DO YOU HAVE AN EXAMPLE THERE OF ONE OF THOSE CALCULATIONS IN THIS PARAGRAPH, DOCTOR?

A IN MY REPORT, I INCLUDED A SCREEN-SHOT FOR ONE OF SUCH PARISHES, FOR THE WINN PARISH, AND HOW FAR THAT WINN PARISH IS FROM A FACILITY IN DALLAS, TEXAS. I INCLUDED THAT SCREEN-SHOT IN MY REPORT.

Q AND THAT'S IN EXHIBIT C OF YOUR REPORT?

A CORRECT.

Q DOCTOR, YOU SAY YOU USED GOOGLE TO CALCULATE THE DISTANCE. IS THERE ANY PROBLEM WITH USING GOOGLE TO SET A LOCATION IN EACH PARISH? DOES THAT PRESENT ANY PROBLEM FOR YOUR ANALYSIS?

A MORE OR LESS, IT DID NOT. GOOGLE PROVIDES THIS INFORMATION. IT'S VERY EASY TO OBTAIN. JUST TYPE THE NAME OF THE FACILITY -- THE ADDRESS OF THE FACILITY, THE NAME OF THE PARISH, AND THEN GOOGLE WILL TELL YOU HOW FAR THAT PARTICULAR FACILITY IS.

THERE WERE THREE PARTICULAR PARISHES FOR WHICH I

COULD NOT OBTAIN THE DISTANCE OF AN ABORTION FACILITY FROM A PARISH. AND GOOGLE TELLS YOU THAT THIS PARISH DISTANCE IS NOT AVAILABLE AND THEN GOOGLE PROVIDES YOU A CHOICE OR TWO OR THREE THAT YOU CANNOT GET THE DISTANCE OF THIS PARISH, BUT YOU CAN USE THIS LOCATION WITHIN A PARISH AND GET THAT DISTANCE, AND THAT'S WHAT I DID. IN MY REPORT, I HAVE CLEARLY IDENTIFIED THOSE THREE INSTANCES AND WHAT ADDRESSES I USED.

Q THANK YOU, DOCTOR. LET'S TALK ABOUT THE METHODOLOGY THAT YOU USED FOR YOUR OPINION. WHEN YOU GOT THESE FACTS AND DATA AS YOU'VE JUST DESCRIBED, WHAT DID YOU DO WITH THEM?

A NOW, BASED ON THE ITEMS WHICH WE HAVE GONE THROUGH, WHAT WE -- WHAT I HAD AT THIS POINT WAS HOW MANY WOMEN LIVE IN EACH PARISH, HOW MANY WOMEN OF REPRODUCTIVE AGE LIVE IN EACH PARISH, AND HOW FAR EACH PARISH IS FROM A PARTICULAR ABORTION FACILITY. AND WHAT I DID WAS I PRESENTED DIFFERENT SCENARIOS IN MY REPORT, COMPUTING THE WEIGHTED AVERAGE. MEANING IF SOME PARISH HAS MORE WOMEN, THAN THAT --

Q LET ME STOP YOU THERE, DOCTOR. I DON'T MEAN TO INTERRUPT YOU, BUT I WANT THE COURT TO BE ABLE TO FOLLOW THIS. SO I WANT TO REFER THE COURT TO PARAGRAPH 15 WHERE YOU'RE TALKING ABOUT THIS IDEA OF WEIGHTED AVERAGE JUST FOR THE SAKE OF CLARITY. PLEASE GO AHEAD, DOCTOR.

A GIVE ME ONE SECOND. NOW, IN NO. 15 -- I THINK THE BEST WOULD BE IF I JUST GO SLOW AND EXPLAIN THE MATHEMATICAL EXPRESSION.

Q SURE.

A SO I'M WRITING DOWN -- LET ME PRETEND X^1 IS HOW MANY WOMEN ARE THERE IN PARISH NO. 1 AND LET ME PRETEND THAT D^1 IS THE DISTANCE FROM THAT PARISH TO A PARTICULAR ABORTION FACILITY. SIMILARLY, X^2 WOULD BE HOW MANY WOMEN ARE IN THAT PARISH, AND D^2 WOULD BE HOW FAR THE PARTICULAR ABORTION FACILITY IS FROM THAT PARISH.

Q SORRY TO INTERRUPT AGAIN, DOCTOR. WHEN YOU SAY "PRETEND," YOU DON'T MEAN YOU'RE JUST MAKING UP THE NUMBERS; RIGHT?

A NO. I'M PRETENDING THAT -- WHEN I SAY "PRETEND," I MEAN THE VARIABLE X.

Q THANK YOU. I JUST WANT TO BE --

A I HAVE THE EXACT DISTANCES -- IN MATHEMATICS, YOUR HONOR, WE REFER TO THESE AS THE VARIABLES, SO I'M JUST DEFINING SOME X'S, WHICH DENOTE HOW MANY WOMEN ARE IN THE PARISHES, AND I ALSO AM CALLING D'S AS THE DISTANCES. AND THEN ON THE NEXT PAGE, I HAVE THE MATHEMATICAL FORMULA, STATISTICAL FORMULA, FOR THE WEIGHTED DISTANCE.

Q DOCTOR, THANK YOU. SO LET'S PAUSE A SECOND ON THIS IDEA OF AVERAGE DISTANCE BECAUSE I WANT THE COURT TO UNDERSTAND WHAT YOU MEAN AS A STATISTICIAN BY "AVERAGE DISTANCE" HAVING DONE THIS CALCULATION. COULD YOU EXPLAIN THAT CONCEPT?

A THE CONCEPT IS THE WEIGHTED AVERAGE, MEANING THE

MORE THE NUMBER OF WOMEN IN A PARISH, THE MORE THE WEIGHT I'M ASSIGNING TO THAT PARISH. THE WEIGHT IS THE NUMBER OF WOMEN IN THAT PARISH.

Q SO WHEN THE NUMBER IS SORT OF PRODUCED BY THIS CALCULATION, COULD YOU TALK ABOUT WHAT IT DESCRIBES?

A LET ME EXPLAIN BY AN EXAMPLE. LET ME JUST CREATE A HYPOTHETICAL SITUATION. SUPPOSE THERE ARE 100 WOMEN WHO ARE DRIVING 1 MILE AND THEN THERE IS ONE WOMAN WHO IS DRIVING 20 MILES, MEANING 100 WOMEN ARE DRIVING 1 MILE AND THERE IS ONE WOMAN WHO IS DRIVING 20, THEN THE AVERAGE DISTANCE SHOULD NOT BE CLOSE TO 20. WHY? BECAUSE THERE WERE 100 OF THEM DRIVING ONLY 1 MILE. AND WEIGHTED AVERAGE TAKES THIS INTO ACCOUNT. SO IT GIVES YOU AN IDEA THAT ON THE AVERAGE, IN GENERAL, WHAT WOULD BE THE DRIVING DISTANCE.

Q THANK YOU, DOCTOR. IS THIS METHODOLOGY THAT YOU USED IN FORMULATING THESE WEIGHTED AVERAGE DISTANCES, IS THIS AN ACCEPTED METHOD IN THE FIELD OF STATISTICS?

A YES. WEIGHTED AVERAGE IS A VERY INTUITIVE EXPRESSION. ALL STANDARD TEXTBOOKS TALK ABOUT THAT. ALL STANDARD STATISTICAL SOFTWARES HAVE THIS. YES, I MEAN, THIS IS -- THIS IS A VERY COMMONLY USED CONCEPT.

Q IS THIS A METHODOLOGY THAT CAN BE TESTED BY OTHER STATISTICIANS THROUGH REPETITION?

A ABSOLUTELY. I HAVE PROVIDED THE EXPRESSION HERE IN THE REPORT AND IT'S A WELL-ACCEPTED, WELL-USED MATHEMATICAL

EXPRESSION.

Q AND, FINALLY, IS THIS A METHODOLOGY WIDELY ACKNOWLEDGED IN THE FIELD OF STATISTICAL ANALYSIS IN PEER REVIEWED LITERATURE?

A YES.

Q THANK YOU. JUST BEFORE I OFFER YOU, I'D LIKE TO TALK ABOUT THE LIMITATIONS AND ASSUMPTIONS OF YOUR REPORT, AND I'LL REFER YOU TO PARAGRAPH 30. BEFORE I DO THAT, THAT MAY SOUND STRANGE TO A LAY PERSON THAT WE'RE TALKING ABOUT THE LIMITATIONS AND ASSUMPTIONS OF THE REPORT, RIGHT; BUT WHY IS THAT IMPORTANT TO NOTE THOSE?

A ANY SCIENTIFIC STUDY YOU PRESENT, YOU HAVE TO CLARIFY WHAT YOU DID, HOW IT WAS DONE, AND WHAT ARE THE ASSUMPTIONS YOU MEET. IF YOU DON'T SPECIFY THESE, THEN HOW CAN SOMEBODY REPRODUCE AND RECALCULATE FOR THEIR OWN WORK OR TO VERIFY. THIS IS STANDARD IN SCIENTIFIC LITERATURE.

Q SO WHY DON'T YOU DISCUSS FOR THE COURT THE THREE LIMITATIONS AND ASSUMPTIONS THAT YOU HAVE THERE LISTED IN PARAGRAPH 30, PLEASE, DOCTOR?

A LET ME GO THROUGH THOSE ONE BY ONE. THE NUMBER ONE IN ITEM 30 IS THE REPORT ASSUMES THAT ANY WOMAN IN LOUISIANA IS EQUALLY LIKELY TO SEEK AN ABORTION FACILITY REGARDLESS OF THE PARISH IN WHICH SHE RESIDES. SO THIS IS ONE OF THE ASSUMPTIONS. MEANING WITHOUT ANY ADDITIONAL INFORMATION, IT WOULD BE UNFAIR FOR ME AS A STATISTICIAN TO ASSUME THAT MORE

WOMEN IN THIS PARTICULAR PARISH ARE SEEKING ABORTION COMPARED TO SOME OTHER PARISH.

Q AND WHAT ABOUT THE SECOND ONE?

A MEANING THE FIRST ONE IS A FAIR ASSUMPTION, THAT EVERYBODY IS EQUALLY LIKELY. THE SECOND ONE IS THE REPORT ASSUMES THAT THE DISTANCE TRAVELED IS THE ONLY CRITERIA FOR SELECTING AN ABORTION FACILITY FROM A LIST OF AVAILABLE ABORTION CLINICS. SO, AGAIN, THIS SETS THE GROUND TO BE LEVEL. MEANING MY REPORT IS FOCUSING ON DISTANCE, AND I'M BASING IT ON THE BASIS OF THIS, THAT DISTANCE IS THE ONLY CRITERIA.

Q SO, DOCTOR, DOES THAT MEAN THAT YOU DID NOT CONSIDER A WOMAN'S SOCIO-ECONOMIC LEVEL OR THEIR LOW-INCOME STATUS AS A FACTOR?

A NO, I DID NOT.

Q AND THE THIRD LIMITATION ASSUMPTION?

A THE THIRD IS THE DISTANCE TRAVELED TO AN ABORTION FACILITY IS COMPUTED FROM THE PARISH TO A PARTICULAR ABORTION FACILITY. NOW, LET ME EXPLAIN THIS. NOW, THE DATA WHICH IS SCIENTIFICALLY AVAILABLE, RELIABLE DATA ABOUT LOUISIANA, ABOUT LOUISIANA'S 64 PARISHES IS PARISH-BASED. THERE IS NO DATA WHICH IS SCIENTIFICALLY AVAILABLE, RELIABLE DATA, WHICH IS AT ZIP CODE LEVEL OR EVEN INDIVIDUAL PERSON.

SO THAT IS THE ASSUMPTION I HAD TO MAKE, THAT I'M LOOKING AT WOMEN IN A PARISH AND I ASSUME THAT ALL OF THEM

LIVE IN THAT PARISH AND THEY ALL WILL DRIVE THE SAME DISTANCE. IF YOU WANT, I CAN EXPLAIN THIS MORE.

Q IT MIGHT COME UP LATER, DOCTOR, BUT I THINK THAT'S SUFFICIENT NOW. THANK YOU.

MR. DUNCAN: YOUR HONOR, AT THIS TIME, THE DEFENDANT OFFERS DR. SOLANKY AS AN EXPERT IN THE FIELD OF MATHEMATICS AND STATISTICAL ANALYSIS.

THE COURT: THANK YOU.

ANY OBJECTIONS?

MS. LEVINE: JUST THE OBJECTION AS STATED IN THE MOTION.

THE COURT: I UNDERSTAND.

HE WILL BE ACCEPTED IN THE FIELDS TENDERED.

MR. DUNCAN: THANK YOU, YOUR HONOR. NOW, AT THIS TIME, I WANT TO OFFER SOME DEMONSTRATIVE EXHIBITS TO HELP DR. SOLANKY PRESENT HIS OPINION. WE'RE GOING TO GET SOME OBJECTIONS TO THIS, SO I GUESS MAYBE WE SHOULD DO THEM ONE AT A TIME? LET'S DO IT THAT WAY. IS THAT OKAY?

THE COURT: YES.

MR. DUNCAN: SO THE FIRST IS DEFENDANT'S EXHIBIT THAT'S MARKED 151. AND SINCE THESE ARE NOT IN EVIDENCE, REMIND ME HOW WE DO THIS, YOUR HONOR? WE JUST PUT IT UP ON THE SCREEN AND I EXPLAIN WHAT IT IS AND THEN WE SEE IF THERE'S AN OBJECTION; IS THAT HOW --

THE COURT: AND ALL OF THIS IS -- NONE OF THIS, I

SHOULD SAY, IS CONFIDENTIAL I TAKE IT?

MR. DUNCAN: NO, I DON'T THINK SO, YOUR HONOR. NO.

THE COURT: OKAY. SO THE ONLY DIFFERENCE BETWEEN PUBLISHING IT TO ME FOR ACCEPTANCE OR NOT AS AN EXHIBIT AND IT BEING ACCEPTED IS IT WOULD GO UP ON THE SCREEN, SO IF -- YOU KNOW, I MEAN, WE HAVE SOME PEOPLE IN THE AUDIENCE WHO MIGHT WANT TO SEE IT SO...

MR. DUNCAN: OKAY.

THE COURT: SO I'LL RULE ON IT. IF IT'S ACCEPTED, THEN IT CAN BE PUBLISHED TO EVERYBODY.

MR. DUNCAN: THAT'S FINE. MAYBE IT WOULD BE HELPFUL TO HAVE DR. SOLANKY EXPLAIN EACH ONE?

THE COURT: YOU BET.

MR. DUNCAN: OKAY.

BY MR. DUNCAN

Q SO, DR. SOLANKY, WE'RE ATTEMPTING TO OFFER SOME DEMONSTRATIVE EXHIBITS TO HELP YOU PRESENT YOUR TESTIMONY. HERE'S THE FIRST ONE, EXHIBIT A, PLEASE EXPLAIN WHAT THAT IS AND HOW YOU PUT IT TOGETHER?

THE COURT: MR. DUNCAN, THIS IS DEFENDANT 161?

MR. DUNCAN: I'M SORRY, YOUR HONOR, IT'S DEFENDANT 151.

THE COURT: 151?

MR. DUNCAN: ONE, FIVE, ONE.

BY MR. DUNCAN

Q GO AHEAD, DOCTOR.

A THIS IS THE DATA WE TALKED ABOUT EARLIER IN MY REPORT THAT -- THE ESTIMATES FOR THE YEAR 2013. WHAT I HAVE IN EXHIBIT A IS THE NAME OF THE PARISH, ACADIA PARISH, AND THE TOTAL POPULATION OF THE PARISH, WHICH IS 62,204, WHICH I GOT FROM THE U.S. CENSUS BUREAU'S WEBSITE, AND THE NUMBER OF WOMEN IN THE AGE OF 15 TO 44, AND I EXPLAINED THAT BEFORE. AND THE LAST COLUMN IS TOTAL NUMBER OF WOMEN IN THAT PARISH. AND I HAVE DONE THIS FOR ALL THE 64 PARISHES IN LOUISIANA.

Q THANK YOU.

MR. DUNCAN: THE DEFENDANT OFFERS AS DEMONSTRATIVE EXHIBIT DX 151.

THE COURT: ANY OBJECTION?

MS. LEVINE: NO OBJECTION.

THE COURT: ALL RIGHT. LET IT BE RECEIVED.

BY MR. DUNCAN:

Q LET'S GO TO THE NEXT ONE, IS DX 152. IS THAT UP ON THE SCREEN?

A NOT YET.

Q IT SHOULD BE A COLORED MAP. THERE WE GO. DO YOU SEE THAT EXHIBIT, DOCTOR?

A YES, I DO.

Q DID YOU PREPARE THAT EXHIBIT?

A I PREPARED THIS EXHIBIT.

Q EXPLAIN WHAT IT DEPICTS.

A NOW, THIS IS ESSENTIALLY THE SAME EXHIBIT AS BEFORE; WHAT WE JUST SAW A SECOND AGO. WHAT I HAVE DONE IS THIS IS CALLED A HEAT MAP. I HAVE RECORDED THESE PARISHES WITH HIGHER PERCENTAGE, HIGHER -- I'M SORRY. THAT'S WRONG. THE HIGHER NUMBER OF WOMEN IN A DARKER COLOR AND THE LIGHTER SHADE IS THE PARISHES. IT'S NOT VERY CLEAR ON MY SCREEN, BUT I HAVE A SCALE THERE, YOUR HONOR, ON THE RIGHT SIDE. I CAN BARELY READ IT HERE, BUT THE DARKER THE COLOR --

BY MR. DUNCAN:

Q YOUR SCREEN IS KIND OF LIGHT. IF WE HAVE TO REFER TO THIS, DOCTOR, YOU'LL HAVE THE HARD COPY THERE THAT YOU CAN LOOK AT THAT SHOWS --

A IT'S HERE NOW. SO THE DARKEST COLOR OF RED, THAT'S THE SHADE FOR, SAY, 231,000 OR SO, AND IT GOES LIGHTER AS THE NUMBER OF WOMEN DECREASE. THIS IS JUST A VISUAL DEPICTION OF THE SAME EXHIBIT. SIMILARLY, I HAVE FILLED IN THE NUMBERS IN SORT OF CREATING A TABLE WHICH I HAD IN EXHIBIT A. I'M JUST FILLING IN THOSE NUMBERS IN EACH PARISH BY THE COLOR. THIS IS JUST A BETTER VISUALIZATION.

Q THANK YOU, DOCTOR.

MR. DUNCAN: DEFENDANT OFFERS EXHIBIT 152 INTO EVIDENCE.

THE COURT: OBJECTION?

MS. LEVINE: NO OBJECTION.

THE COURT: ALL RIGHT. LET IT BE ADMITTED.

BY MR. DUNCAN:

Q ALL RIGHT. LET'S MOVE ON TO 153. DOCTOR, DO YOU SEE THAT EXHIBIT 153 ON YOUR SCREEN?

A I DO.

Q DID YOU PREPARE THIS EXHIBIT?

A YES, I DID.

Q EXPLAIN TO THE COURT WHAT IT DEPICTS.

A AGAIN, SAME IDEA, SAME CONCEPT. I HAVE VISUALIZED TWO PARTICULAR ABORTION CLINICS, ONE IN SHREVEPORT AND ONE IN NEW ORLEANS. AND USING A VERY POPULAR WEBSITE, ALL I HAVE DONE IS DRAWN A CIRCLE OF RADIUS 100 MILES AND AN INNER CIRCLE OF 100, 150 MILES JUST TO SEE HOW FAR IS 150 MILES FROM THIS PARTICULAR LOCATION AND HOW FAR IS 100 MILES FROM EACH OF THESE TWO ABORTION CLINICS.

Q AND HOW DID YOU DETERMINE -- I THINK WE'VE ALREADY BEEN OVER THIS EARLIER, BUT HOW DID YOU DETERMINE THE LOCATION OF THE TWO CLINICS?

A NOW, THESE ARE THE TWO CLINICS WHICH I HAD IN MY REPORT AS WELL. ONE IS IN SHREVEPORT; ONE IS IN NEW ORLEANS.

Q AND HOW DID YOU GO BACK MAKING SURE THAT THE CIRCLES THAT YOU DREW AROUND THEM HAVE THE PROPER RADIUS?

A THIS WEB- -- IF YOU SCROLL DOWN, PLEASE. NOW, THIS IS THE WEBSITE. SO WHAT IT DOES IS IF YOU FEED IN AN ADDRESS, IN WHICH I DID, YOU TYPE IN THE ADDRESS OF THE SHREVEPORT CLINIC, AND IF YOU ZOOM IN YOU CAN LITERALLY SEE THE STREET

AND WHICH SIDE OF STREET THAT THE CLINIC IS ON.

SO THE TWO THINGS WHICH YOU NEED TO PROVIDE IS THE ADDRESS AND HOW MANY MILES. FOR ME IT WAS 100 AND 150, AND IT DRAWS THE CIRCLES FOR YOU. THIS, AGAIN, IS THE SAME MAP OF LOUISIANA. JUST VISUALIZATION OF WHAT IS 100 MILE AROUND THIS CLINIC? WHAT IS 150 MILE AROUND THIS CLINIC? JUST SIMPLE CIRCLES.

MR. DUNCAN: DEFENDANT OFFERS EXHIBIT 153 INTO EVIDENCE.

THE COURT: OBJECTION?

MS. LEVINE: WE DO OBJECT TO THIS DEMONSTRATIVE, YOUR HONOR, AS THIS INFORMATION WAS NOT INCLUDED IN THE EXPERT REPORT AND IT APPEARS THAT THIS INVESTIGATION OF THE MAPPING AND THE CIRCLES WAS DONE SUBSEQUENT TO THE REPORT AND THE DEPOSITION.

THE COURT: ALL RIGHT.

MR. DUNCAN?

MR. DUNCAN: THIS IS A DEMONSTRATIVE EXHIBIT. IT DEPICTS AS A -- THE SAME INFORMATION THAT'S IN THE REPORT SIMPLY IN A DIFFERENT VISUAL WAY TO MAKE IT EASIER FOR DR. SOLANKY TO EXPLAIN HIS REPORT AND MAKE IT EASIER FOR THE COURT TO UNDERSTAND IT. IT'S BASED ON THE SAME DATA THAT'S IN THE REPORT, IT'S JUST PRESENTED IN A DIFFERENT WAY.

THE COURT: OKAY.

ANY FURTHER FOLLOW-UP ON THAT?

MS. LEVINE: WE DISAGREE THAT THIS INFORMATION IS CLEARLY AVAILABLE ON THE REPORT.

THE COURT: BUT THE UNDERLYING DATA THAT IT'S BASED ON IS -- DO YOU DISAGREE THAT THE UNDERLYING DATA THAT THE VISUAL IS BASED ON IS IN THE REPORT?

MS. LEVINE: I DON'T -- I DISAGREE. I DON'T BELIEVE THAT THIS EXACT DATA IS IN THE REPORT.

THE COURT: MR. DUNCAN?

MR. DUNCAN: I THINK IT IS, YOUR HONOR. I THINK THE ADDRESSES OF THE CLINICS ARE IN THERE, AND ALL DR. SOLANKY HAS DONE IS TAKEN A MAP, JUST LIKE HE DID IN THE LAST ONE, PUT THEM ON THERE AND --

THE COURT: WHY DON'T YOU ASK THE WITNESS SO THAT I'M CLEAR AS FAR AS THE RECORD IS CONCERNED BEFORE I RULE.

MR. DUNCAN: SURE.

BY MR. DUNCAN:

Q DR. SOLANKY, COULD YOU EXPLAIN, AGAIN, WHAT YOU DID, WHERE --

THE COURT: NOT WHAT YOU DID. WHERE DID YOU GET THE INFORMATION?

BY MR. DUNCAN:

Q WHERE DID YOU GET THE INFORMATION AT?

A ALL OF THE INFORMATION I NEED IN CREATING THIS WAS THE TWO ADDRESSES, AND THOSE TWO ADDRESSES ARE IN MY REPORT. THEY ARE EVERYWHERE IN THE LITIGATION DOCUMENTS. OTHER THAN

THOSE TWO ADDRESSES, ALL I NEED IS NUMBER 100 AND NUMBER 150. THIS WEBSITE, I COULD HAVE DRAWN ANY NUMBER, 38 MILES, 40 --

THE WITNESS: YOUR HONOR, THIS IS JUST SO THAT THE COURT CAN VISUALIZE WHAT 100 MILE AROUND THE CIRCLE LOOKS LIKE. AND ON THIS MAP, YOU CAN EVEN SEE SOME NAMES. IN PARTICULAR, YOU CAN SEE IF I GO 150 MILES FROM THE SHREVEPORT CLINIC AND 150 MILES FROM THE NEW ORLEANS CLINIC, THOSE TWO CIRCLES OVERLAP. MEANING FROM EITHER OF THOSE -- MEANING PEOPLE LIVING IN THIS INTERSECTING AREA LITERALLY ARE WITHIN 150 MILES OF BOTH THE CLINICS. SO THIS HELPS FOR ME TO EXPLAIN TO THE COURT THAT -- HOW BIG LOUISIANA IS AND HOW FAR THESE CLINICS ARE FROM ONE ANOTHER.

THE COURT: OKAY. I'M GOING TO LET THIS IN, AND I'M NOT MAKING A RULING THAT EVERY DOCUMENT THAT WASN'T PRESENTED IN THE REPORT IS COMING IN NECESSARILY. BUT WITH RESPECT TO THIS SPECIFIC ONE, YEAH, I THINK IT IS BASED ON DATA THAT WAS IN THE REPORT AND IT WILL CERTAINLY -- IT DOES CERTAINLY GIVE THE COURT SOME VISUAL IDEA OF THE DATA.

AND SO I'M GOING TO OVERRULE THE OBJECTION.

MR. DUNCAN: THANK YOU, YOUR HONOR.

BY MR. DUNCAN

Q LET'S MOVE TO 154. DR. SOLANKY, DO YOU RECOGNIZE THIS EXHIBIT? DID YOU PREPARE THIS ONE?

A YES, I DID.

Q COULD YOU EXPLAIN TO THE COURT HOW YOU DID IT AND

WHERE YOU GOT THE DATA TO PREPARE THIS EXHIBIT?

A NOW, THE DATA WHICH I HAD IS THE SAME DATA WHICH I HAD IN THE REPORT, MEANING HOW MANY WOMEN IN EXHIBIT -- FIRST EXHIBIT RIGHT NOW. I FORGOT THE NUMBER. WE TALKED ABOUT HOW MANY WOMEN OF AGE 15 TO 44 YEARS LIVE IN A PARTICULAR PARISH, SO WE HAD -- I HAD THAT DATA IN MY REPORT, AND I ALSO HAD THE DATA OF THE DRIVING DISTANCE.

IN MY REPORT I PROVIDED THE WEIGHTED DRIVING DISTANCE TO A CLINIC. IN THIS EXHIBIT, I'M PRESENTING IT IN A DIFFERENT FORM. THE SAME DATA, JUST PRESENTING IT -- THIS IS NOT EVEN COMPLICATED. ALL I DID WAS LOOKED AT HOW MANY OF THOSE DISTANCES WERE LESS THAN 50. I HAD ALL OF THE DISTANCES IN MY REPORT. I JUST LOOKED AT HOW MANY OF THOSE ARE LESS THAN 50 AND REPORT THAT AS A PERCENT. HOW MANY OF THEM OR LESS THAN 100, I REPORTED AS A PERCENT.

AND THE IDEA IS THIS IS ANOTHER WAY TO VISUALIZE TO SEE WHAT THOSE NUMBERS ARE, HOW MUCH WOMEN ARE ACTUALLY DRIVING, WHAT PERCENTAGE. SO THIS IS AN EASIER REPRESENTATION OF THE SAME DATA, THE DATA BEING HOW MANY WOMEN LIVE IN THE PARISH AND HOW FAR EACH PARTICULAR ABORTION CLINIC IS.

Q DOCTOR, WITH REFERENCE TO THE LAST EXHIBIT THAT WE LOOKED AT, THE CIRCLES, ESSENTIALLY THESE PERCENTAGES ARE SORT OF THE NUMBER OF WOMEN IN LOUISIANA INSIDE THOSE CIRCLES. IS THAT A WAY OF THINKING ABOUT IT?

A ABSOLUTELY. NOW, IF WE GO BACK TO THE EXHIBIT, I

CAN LITERALLY OBTAIN THE DATA IN THIS EXHIBIT, YOUR HONOR, BY -- I HAVE THE PARISH NAME, I HAVE THE PARISH POPULATION, AND I KNOW HOW MUCH IS 100 MILES AROUND, HOW MUCH IS 150 MILES. I COULD JUST SIT HERE AND ADD THOSE NUMBERS AND DIVIDE BY TOTAL WOMEN AND LITERALLY COME UP WITH SIMILAR NUMBERS.

Q THIS IS -- DOCTOR, I THINK YOU SAID THIS IS SOMEWHAT OF A -- MAYBE A LOT MORE SIMPLE THAN THE WEIGHTED AVERAGE EQUATION THAT YOU --

A THE WEIGHTED AVERAGE IS A MATHEMATICAL FORMULA, AND I MUST SAY THAT'S WHAT EVERYBODY USES IN THE REAL WORLD TO REPORT. BUT THIS IS JUST A SIMPLER WAY TO LOOK AT THE SAME DATA.

Q OKAY.

MR. DUNCAN: YOUR HONOR, WE OFFER THIS FOR DEMONSTRATIVE PURPOSES AS EXHIBIT 154.

THE COURT: OBJECTION?

MS. LEVINE: WE DO OBJECT TO THIS EXHIBIT GIVEN THAT IT INVOLVES, AS THE WITNESS HAS JUST TESTIFIED, CALCULATIONS THAT WERE MADE SUBSEQUENT TO THE REPORT. SO THESE CALCULATIONS ARE NOT INCLUDED IN THE REPORT. WE DIDN'T HAVE AN OPPORTUNITY TO DEPOSE THIS WITNESS OR PREPARE FOR CROSS EXAMINATION FOR THESE CALCULATIONS.

THE COURT: THAT DOES CONCERN ME. AND I WAS GOING TO ASK WHETHER OR NOT THE WITNESS HAS BEEN DEPOSED.

HAS THE WITNESS BEEN DEPOSED AT ALL?

MR. DUNCAN: YES, YOUR HONOR.

THE COURT: THE WITNESS WAS DEPOSED? WERE THESE CALCULATIONS IN THIS -- WAS THE DOCUMENT PREPARED AFTER THE WITNESS WAS DEPOSED?

MR. DUNCAN: YES, YOUR HONOR, IT WAS. IT'S SIMPLY A DIFFERENT -- A SIMPLER VISUAL DEMONSTRATION OF ALL OF THE DATA THAT'S IN HIS REPORT ON WHICH HE WAS DEPOSED.

THE COURT: YOU SAY THAT, OKAY, AND MAYBE HE SAYS THAT, BUT I DON'T -- THAT DOESN'T MEAN I HAVE TO ACCEPT IT. THE PROBLEM IS SHE HASN'T HAD A CHANCE TO CHALLENGE IT. AND IF IT'S NOT GIVEN PRIOR TO -- IT'S NOT -- IT'S SUPPOSED TO BE GIVEN, OBVIOUSLY, AS A PART OF THE REPORT. BUT IF IT'S NOT GIVEN PRIOR TO THE REPORT -- IF IT'S GIVEN PRIOR TO A DEPOSITION AND THE PERSON HAS AN OPPORTUNITY TO TEST IT IN A DEPOSITION FORM, THEN I'M PRETTY FORGIVING ON THE FACT THAT IT WASN'T IN THE REPORT ITSELF. BUT HERE THE DOCUMENT IS PROVIDED AFTER THE DEPOSITION WHICH -- AND SO I'M STRUGGLING AS TO WHY THIS DOESN'T PREJUDICE THE PLAINTIFFS.

MR. DUNCAN: I UNDERSTAND, YOUR HONOR. ONE THING I'D ADD IS THAT THE PLAINTIFFS SUPPLEMENTED THEIR EXPERT REPORT WITH NOT JUST DIFFERENT DATA BUT AN ENTIRELY DIFFERENT ARTICLE AND CALCULATION, THIS IS THE ROBERTS' REPORT, THAT CAME AFTER THE DEPOSITION OF KATZ, SO... AND THAT EXPRESSES, YOU KNOW -- IT EXPRESSES THESE KINDS OF PERCENTAGES BY MILES

FROM THE CLINIC OF POPULATION AND THAT WAS DONE AFTER THEIR REPORT AND AFTER THEIR DEPOSITION, SO IT SEEMS ONLY FAIR TO ALLOW US TO PRESENT THE SAME DATA IN OUR REPORT IN THAT SAME FORM.

THE COURT: RESPONSE?

MS. LEVINE: YOUR HONOR, WE MADE A SUPPLEMENT TO OUR EXPERT REPORT AS THE RULES REQUIRE. AND AT THAT POINT, WHICH WAS MARCH 11TH OF 2015, THE DEFENDANT MAY HAVE WISHED TO SUPPLEMENT THEIR REPORT, REQUEST FURTHER DEPOSITION, SOME OTHER REMEDY. AT THIS POINT, WE HAVE RECEIVED THIS INFORMATION ON JUNE 12TH, JUST BEFORE TRIAL, AND THEY'RE CALCULATIONS THAT WERE DONE SUBSEQUENT TO THE DEPOSITION, SO WE HAVEN'T HAD SUFFICIENT OPPORTUNITY.

THE COURT: WELL, SOMETHING ELSE OCCURS TO ME IS THAT, IF MY MEMORY IS CORRECT, THE ARTICLE -- THE ROBERTS' ARTICLE WAS PUBLISHED IN MARCH OF 2015, WAS IT NOT? SO IT WAS UNAVAILABLE TO GIVE PRIOR TO THAT TIME.

MS. LEVINE: THAT'S CORRECT.

MR. DUNCAN: MAY WE OFFER IT FOR DEMONSTRATIVE PURPOSES ONLY SIMPLY TO ALLOW DR. SOLANKY TO EXPLAIN WHAT HE JUST EXPLAINED TO THE COURT IN TERMS OF NUMBERS OF PEOPLE IN PARISHES, YOUR HONOR?

THE COURT: YES. I THINK YOU -- I MEAN, HE COULD TAKE A BOARD AND PUT THESE SAME NUMBERS ON A BOARD AND THAT'S A DEMONSTRATIVE, WHICH IS DIFFERENT FROM AN EXHIBIT. IF THE

UNDERLYING DATA IN HIS REPORT UPON WHICH THIS IS BASED, THEN I WILL LET IT BE INTRODUCED FOR DEMONSTRATIVE PURPOSES ONLY.

MR. DUNCAN: THANK YOU, YOUR HONOR.

BY MR. DUNCAN:

Q AND THEN THE LAST ONE IS DX 155. COULD WE GO THERE? NOW, DOCTOR, DO -- WELL, WE'RE NOT THERE YET. DOCTOR, DO YOU RECOGNIZE THIS EXHIBIT, THIS FINAL ONE?

A YES, I DO.

Q AND EXPLAIN TO THE COURT WHAT IT IS, HOW YOU PREPARED IT AND WHERE YOU OBTAINED THE DATA FROM.

A THIS IS -- THIS IS DIRECTLY OUT OF MY REPORT. I JUST CUT AND PASTED THIS. AND WHAT I HAVE IN THIS EXHIBIT IS -- LET ME GO ONE BY ONE. IN THE FIRST COLUMN, I HAVE AVAILABILITY OF ABORTION CLINICS TO LOUISIANA RESIDENTS. IN THE SECOND ONE IS THE AVERAGE DISTANCE TRAVELED BY ALL WOMEN. AND THEN THE LAST COLUMN IS THE AVERAGE DISTANCE TRAVELED BY ALL WOMEN IN THE AGE GROUP OF 15 TO 44 YEARS. AND I HAVE PRESENTED DIFFERENT SCENARIOS.

THE FIRST SCENARIO IS, YOUR HONOR, IF HOPE SHREVEPORT IS THE ONLY CLINIC, IF THAT IS THE ONLY CLINIC WHICH IS AVAILABLE TO LOUISIANA WOMEN --

Q I DON'T MEAN TO INTERRUPT YOU, DR. SOLANKY, BUT WE HAVEN'T INTRODUCED THIS INTO EVIDENCE YET, SO --

A OKAY. I'M SORRY.

Q -- I WANT TO MAKE SURE THAT WE CAN -- I THINK YOU'VE

EXPLAINED WHAT IT IS AND WHERE IT COMES FROM.

MR. DUNCAN: SO THE DEFENDANT WOULD LIKE TO INTRODUCE THIS ONE INTO EVIDENCE AS 155.

THE COURT: OBJECTION?

MS. LEVINE: ONLY THE OBJECTION INSOFAR AS WE HAVE TO RELEVANCE AS STATED IN OUR MOTION.

THE COURT: OKAY. IT'S OVERRULED AND IT WILL BE ADMITTED.

MS. LEVINE: YOUR HONOR, I'M SORRY, ONE POINT OF CLARIFICATION, IF I MAY, REGARDING YOUR PRIOR RULING. WILL THE WITNESS BE ABLE TO TESTIFY AS TO THE CALCULATIONS ACHIEVED OR DISPLAYED IN 154, THE PERCENTAGES THAT WERE REACHED SUBSEQUENT TO REPORT AND THE DEPOSITION?

THE COURT: IF THE CALCULATIONS WERE MADE EITHER -- WELL, IF THE CALCULATIONS WERE MADE IN THE REPORT, AND I'LL STRETCH THE RULE A LITTLE BIT, IF THE CALCULATIONS WERE MADE PRIOR TO THE TIME OF THE DEPOSITION AND YOU HAD THE OPPORTUNITY TO EXPLORE THE CALCULATIONS IN HIS DEPOSITION, THEN I WILL ALLOW THE CALCULATIONS TO COME INTO EVIDENCE. IF THE CALCULATIONS WERE NOT MADE UNTIL AFTER THE REPORT/DEPOSITION, THEN THE ANSWER IS IT WILL NOT BE ALLOWED.

MR. DUNCAN: THE TESTIMONY WILL NOT BE ALLOWED, YOUR HONOR?

THE COURT: HIS TESTIMONY WILL NOT BE ALLOWED WITH RESPECT TO THOSE CALCULATIONS.

MR. DUNCAN: OKAY. THANK YOU, YOUR HONOR.

BY MR. DUNCAN:

Q DOCTOR, LET'S GO TO YOUR OPINION. AND, AGAIN, YOU CAN REFER TO YOUR REPORT IF NECESSARY. I'M SORRY. ONE SECOND. OKAY. I WANT US JUST TO REFRESH THE RECOLLECTION OF THE COURT ABOUT WHERE WE WERE COMING FROM. LET'S GO BACK TO THE POPULATION DISTRIBUTION CHART IN YOUR REPORT AND TAKE A LOOK AT THE EXHIBIT THAT SHOWS THAT, THAT'S WHAT WE'VE NOW CALLED DX 151, THAT'S THE CHART.

A OKAY.

Q DOCTOR, JUST SORT OF BRIEFLY -- I KNOW YOU'VE GONE OVER THIS ALREADY. JUST EXPLAIN FOR THE COURT, YOU KNOW, WHAT THIS CHART IS SHOWING.

A WHAT THIS CHART IS SHOWING IS THE 64 PARISHES IN LOUISIANA AND HOW MANY TOTAL POP- -- WHAT TOTAL POPULATION IS IN EACH PARISH, THE TOTAL NUMBER OF WOMEN IN EACH PARISH, AND NUMBER OF WOMEN IN THE AGE GROUP OF 15 TO 44, SO THAT THE COURT IS AWARE OF THE NUMBER OF WOMEN LIVING BY EACH PARISH.

Q GREAT. LET'S LOOK AT SORT OF A VISUAL DEMONSTRATION OF THAT IN 152. THIS IS THE -- I THINK YOU CALLED IT A HEAT MAP?

A RIGHT. AND THIS IS THE EXACT SAME DATA. THE ONLY DIFFERENCE IS I HAVE COLOR-CODED IT. THE DARKER SHADE OF THIS COLOR RED MEANS MORE WOMEN LIVE IN THAT PARISH AND THE LIGHTER SHADE MEANS LESS WOMEN LIVING IN THAT PARISH.

Q COULD YOU JUST SORT OF GIVE US SOME GENERAL COMMENTS ON WHICH PARISHES, YOU KNOW, FROM THAT MAP TEND TO HAVE THE MORE CONCENTRATED POPULATION?

A IF YOU LOOK AROUND THE NEW ORLEANS AREA, THESE PARISHES HAVE A VERY HIGH NUMBER OF WOMEN, VERY LARGE NUMBER OF WOMEN LIVING THERE. THEN THE SECOND POCKET WHICH YOU SEE AROUND IS THE BATON ROUGE AREA AND THEN AROUND THE SHREVEPORT/BOSSIER CITY AREA. SO THOSE THREE STAND OUT AS HIGHLY-POPULATED AREAS IN THAT AGE GROUP FOR WOMEN.

Q OKAY. NOW, DOCTOR, LET'S GO TO THE AVERAGE DISTANCES, NO. 155, THE LAST EXHIBIT. AND SO THE COURT -- YOU CAN TALK TO THE COURT ABOUT WHAT THIS CHART MEANS, AND WE'LL -- TELL YOU WHAT, LET'S GO THROUGH IT TOGETHER FROM THE TOP TO THE BOTTOM. DO YOU SEE THAT EXHIBIT?

A YES, I DO.

Q OKAY. NOW, LET'S GO TO THE FIRST COLUMN THAT SAYS, "AVAILABILITY OF ABORTION CLINICS TO LOUISIANA RESIDENTS." NOW, GO DOWN THROUGH THAT CHART AND EXPLAIN TO US, YOU KNOW, WHAT YOU'RE TRYING TO GET ACROSS BY LISTING THESE CLINICS.

A OKAY. NOW, WHAT I'M TRYING TO SHOW HERE IS THAT -- THE FIRST ENTRY IS HOPE SHREVEPORT, MEANING IF THIS WAS THE ONLY CLINIC WHICH WAS AVAILABLE TO LOUISIANA WOMEN, JUST THIS ONE, HOPE SHREVEPORT, THEN THE AVERAGE DISTANCE TRAVELED BY ALL WOMEN WOULD BE 228.1 MILES AND THE AVERAGE DISTANCE TRAVELED BY WOMEN IN THE AGE GROUP OF 15 TO 44 WOULD BE 229.3

MILES.

Q LET'S PAUSE HERE AGAIN OVER THE TERM "AVERAGE" TO MAKE SURE WE UNDERSTAND STATISTICALLY WHAT THAT MEANS.

A THAT IS THE WEIGHTED AVERAGE, MEANING IT TAKES INTO ACCOUNT HOW MANY WOMEN LIVE IN A PARTICULAR PARISH. AND IN SIMPLER TERMS, THIS IS WHAT A TYPICAL DRIVING DISTANCE WOULD BE ON THE AVERAGE IF HOPE SHREVEPORT WAS THE ONLY CLINIC OPEN.

Q AND SOME DRIVING DISTANCES COULD BE MORE AND SOME COULD BE LESS; IS THAT RIGHT, DOCTOR?

A THE AVERAGE TELLS YOU WHAT HAPPENS ON THE AVERAGE. LIKE IF I HAVE TEN PEOPLE IN THE ROOM AND I SAY THE AVERAGE AGE IS 38, THEN IT TELLS YOU ON THE AVERAGE WHAT THE AGE GROUPS ARE. SOME COULD BE YOUNGER THAN 38, SOME COULD BE OLDER, BUT THAT'S WHERE THE MOST OF THE MASS IS CENTERED. AND THAT'S WHAT I HAVE IN THIS PARTICULAR TABLE.

Q FOR PURPOSES OF STATISTICS, DR. SOLANKY, IS AVERAGE SORT OF THE MOST DESCRIPTIVE KIND OF TERM THAT ONE COULD USE?

A STATISTICALLY, MATHEMATICALLY IN THIS WORLD WE LIVE IN, AVERAGE IS THE MOST COMMONLY USED STATISTIC.

Q AND EXPLAIN WHY THAT IS.

A AVERAGE JUST TELLS YOU WHAT IS HAPPENING IN GENERAL, ON THE AVERAGE, MEANING WHAT A TYPICAL THING IS. WHEN THE CENSUS BUREAU SAYS THE AVERAGE AGE, WHEN THE FEDERAL GOVERNMENT SAYS THE AVERAGE INCOME, AVERAGE EXPENDITURE, IT'S JUST GIVING SOME IDEA WHAT'S HAPPENING IN GENERAL, IN A BROAD

SENSE.

Q OKAY. THANK YOU, DOCTOR. LET'S GO DOWN THE CHART. LET'S GO TO THE NEXT ROW. IT SAYS, "WHCC NEW ORLEANS." EXPLAIN THAT ONE, PLEASE.

A SO IN THE SECOND ROW THERE, I'M PRETENDING THAT WHCC IS THE ONLY CLINIC WHICH IS OPERATING IN THE STATE OF LOUISIANA. IF THAT WAS THE ONLY CLINIC, THEN, ROUGHLY, THE AVERAGE DISTANCE DRIVEN BY ALL WOMEN WOULD BE 138.7 MILES AND THE NUMBER FOR THE AGE GROUP 15 TO 44 IS VERY, VERY SIMILAR; EXACTLY 137 MILES.

Q THANK YOU, DOCTOR. WHAT'S THE NEXT ONE, THE GREEN ROW THERE? EXPLAIN THAT ONE.

A THE THIRD ENTRY IS PRETENDING THAT -- ASSUMING THAT THESE TWO CLINICS ARE THE ONES WHICH ARE OPEN, MEANING AVAILABLE FOR LOUISIANA WOMEN TO SEEK ABORTION, THE HOPE CLINIC IN SHREVEPORT AND THE WOMEN'S HEALTHCARE IN NEW ORLEANS. IF THESE TWO CLINICS ARE OPEN, THEN, ON THE AVERAGE, THE DRIVING -- DRIVEN DISTANCE WOULD BE 82.7 MILES FOR ALL OF THE WOMEN. AND THE WOMEN IN THE AGE GROUP OF 15 TO 44, THAT NUMBER BECOMES 82.0 MILES.

Q THANK YOU. NOW, IN THE NEXT YOU'VE CONSIDERED SOME OUT-OF-STATE CLINICS, AND COULD YOU SAY WHAT THOSE CLINICS ARE, DOCTOR?

A NOW, IN THE NEXT BLOCK I HAVE LOOKED AT A NUMBER OF CLINICS IN HOUSTON, DALLAS, MOBILE, AND JACKSON.

Q SO LET'S MAKE SURE WE UNDERSTAND. YOU'VE GOT A CLINIC THERE IN HOUSTON, YOU'VE GOT -- THE NEXT ONE, TSC DALLAS, I BELIEVE THAT'S A TYPO --

A THAT'S A TYPO.

Q -- THAT SHOULD BE TSC HOUSTON?

A RIGHT. YEAH. I APOLOGIZE. THE TSC IS NOT IN DALLAS. TSC IS IN HOUSTON.

Q RIGHT. AND JUST TO BE CLEAR ABOUT THAT, LET'S LOOK BACK AT YOUR REPORT WHERE YOU LIST THE OUT-OF-STATE CLINICS. THAT'S ON PAGE 4, PARAGRAPH 8 OF YOUR REPORT. LET'S GO THERE JUST REAL QUICK AND THEN WE'LL FLIP BACK TO THE CHART. THAT'S PAGE 4, PARAGRAPH 8. OKAY. HERE'S THE LIST, I GUESS, JUST TO EXPLAIN THE CHART BETTER.

A ALL RIGHT. IN NO. 3, WHEN I WAS WRITING THIS REPORT, I DIDN'T FEEL LIKE TYPING THE ENTIRE ADDRESS OTHERWISE THE TABLE BECOMES TOO MESSY TO LOOK AT, SO I WANTED TO GIVE EACH CLINIC A NICKNAME, SORT OF. AND BY MISTAKE, INSTEAD OF FOR TEXAS SURGICAL CENTER, I WROTE DALLAS INSTEAD OF HOUSTON.

Q DOES THAT AFFECT THE OUTCOME AT ALL?

A IT DOES NOT. WHAT I USED WAS THE ADDRESS. THE NICKNAME I GAVE HAS NO BEARING ON THE DISTANCE.

Q JUST FOR THE COURT'S INFORMATION, GOING DOWN THAT LIST, JUST TALK ABOUT THE OUT-OF-STATE CLINICS THAT YOU LOOKED AT, PLEASE.

A THE OUT-OF-STATE CLINICS ARE -- THE FIRST ONE IS

TEXAS SURGICAL CENTER IN HOUSTON. THE NEXT ONE IS PLANNED PARENTHOOD IN -- AGAIN, IN HOUSTON. AND THEN SOUTHWESTERN WOMEN'S SURGERY CENTER IN DALLAS. PLANNED PARENTHOOD IN DALLAS. JACKSON'S WOMEN'S HEALTH ORGANIZATION IN JACKSON. AND PLANNED PARENTHOOD IN MOBILE, ALABAMA.

Q THANKS. WHY DON'T WE GO BACK TO THE CHART NOW. THAT'S BACK TO DX 155. OKAY. WE WERE ON THE ROW CALLED "OUT-OF-STATE CLINICS," AND JUST START GOING BACK THROUGH THAT -- THAT ROW, PLEASE.

A WHAT I HAVE NEXT IS UNDER OUT-OF- -- EXCUSE ME -- OUT-OF-STATE CLINICS IS I HAVE LOOKED AT THESE -- THESE CLINICS. I THINK THERE ARE SIX; RIGHT? ONE, TWO, THREE, FOUR, FIVE, SIX. YEAH. SO I'M ASSUMING THAT NONE OF THE LOUISIANA CLINICS IS OPEN, NONE, AND THE ONLY ONES AVAILABLE ARE THESE SIX WHICH ARE OUTSIDE OF LOUISIANA.

SO IN THIS HYPOTHETICAL SITUATION, IF NOTHING IN LOUISIANA IS OPEN, ONLY THE ONES OUTSIDE SURROUNDING LOUISIANA ARE OPEN, THEN THE AVERAGE DISTANCE DRIVEN BY LOUISIANA WOMEN OF ANY AGE GROUP WOULD BE 171.4 MILES AND IT BECOMES 170.8 FOR WOMEN IN THE AGE GROUP OF 15 TO 44.

Q GREAT. OKAY. LET'S GO DOWN. AND LOOK AT THIS NEXT ROW WHICH IS CALLED "IN-STATE AND OUT-OF-STATE." PLEASE EXPLAIN THAT ONE, DOCTOR.

A IN THIS LAST ONE, IN IN-STATE AND OUT-STATE, I TOOK, AGAIN, THOSE FIVE OUT OF LOUISIANA AND I INCLUDED THE ONE --

TWO IN LOUISIANA, THE ONE IN SHREVEPORT AND THE ONE IN NEW ORLEANS, SO FOR THESE SEVEN CLINICS WHAT A TYPICAL AVERAGE DRIVING DISTANCE WOULD BE, AND THAT CAME OUT TO BE 79.2 MILES FOR ALL WOMEN AND 78.6 MILES FOR THE WOMEN IN THE AGE GROUP 15 TO 44.

THE COURT: CAN I JUST GET CLARI- --

MR. DUNCAN: YES.

THE COURT: WHAT YOU'RE SAYING IN THE LAST ONE IS THAT IF THE CLINICS, WHICH ARE SHOWN IN THE BLOCK, REMAINED THIS WOULD BE THE AVERAGE DISTANCE?

THE WITNESS: CORRECT. CORRECT, YOUR HONOR.

BY MR. DUNCAN:

Q AND YOU'VE GOT SOME FOOTNOTES THERE WHERE YOU ADDRESS THE ISSUE OF CONFIDENCE INTERVAL. COULD YOU BRIEFLY ADDRESS THAT?

A CAN WE JUST SCROLL DOWN JUST A BIT? YEAH. HERE ARE THE TWO CONFIDENCE INTERVALS. SO THIS GIVES YOU SOME IDEA ABOUT THE VARIATION IN THOSE NUMBERS. 95 PERCENT CONFIDENCE INTERVAL GIVES YOU SOME SORT OF A PROBABILITY THAT THE DISTANCE YOU'RE DRIVING WOULD RANGE FROM THIS NUMBER TO THAT NUMBER.

Q AND EXPLAIN THE SIGNIFICANCE OF THE 95 PERCENT CONFIDENCE INTERVAL, DOCTOR.

A YOUR HONOR, ANY STATISTICAL TERM HAS SOME ERROR IN IT, SOME VARIATION IN IT. SO TYPICALLY STATISTICIANS LIKE TO

INCLUDE SUCH A CONFIDENCE INTERVAL TO SEE HOW FAR THAT NUMBER COULD VARY.

THE COURT: FIVE EITHER WAY?

THE WITNESS: RIGHT.

THE COURT: FIVE PERCENT EITHER WAY?

THE WITNESS: RIGHT.

A SO THIS ONE IS LIKE 95 PERCENT CONFIDENCE INTERVAL AND THIS GOES FROM 67.4 MILES TO ABOUT 91 MILES OF CONFIDENCE INTERVAL. SORT OF LIKE IN THE POLLS WHEN THEY SAY THAT THIS CANDIDATE HAS APPROVAL OF 53 PERCENT WITH AN ERROR MARGIN OF 3 PERCENT, SO THEY MEAN --

THE COURT: SAME THING AS ERROR OF MARGIN?

THE WITNESS: RIGHT.

A SO MEANING THE TWO NUMBERS IS IN BETWEEN THOSE TWO.

MR. DUNCAN: YOUR HONOR, COULD YOU JUST GIVE ME ONE SECOND FOR ME TO CONFER WITH CO-COUNSEL?

THE COURT: SURE.

MR. DUNCAN: YOUR HONOR, I'D LIKE TO ADDRESS ONE THING. I UNDERSTAND THAT YOUR HONOR HAS RULED THAT DR. SOLANKY MAY NOT TESTIFY ABOUT THE CALCULATIONS THAT HE USED FOR EXHIBIT D. I UNDERSTAND THAT, BECAUSE -- AND WHILE, YOU KNOW, DEFENDANT DISAGREES WITH THAT, WE WOULD LIKE TO MAKE A PROFFER OF WHAT HIS TESTIMONY WOULD HAVE BEEN. WOULD YOUR HONOR PERMIT THAT?

THE COURT: ABSOLUTELY.

MR. DUNCAN: THANK YOU.

BY MR. DUNCAN:

Q DR. SOLANKY, LET'S GO NOW -- WE'VE FINISHED TALKING ABOUT THE AVERAGE DRIVING DISTANCES. AND LET'S GO -- I TELL YOU WHAT, FOR EXPLANATORY PURPOSES --

MR. DUNCAN: AND, YOUR HONOR, I ALSO REALIZE -- OH, I THINK YOU DID LET THIS ONE IN, YOUR HONOR. YOU DID LET 153 IN? AM I CORRECT THERE?

THE COURT: I THINK THE ONLY ONE WE EXCLUDED --

MR. DUNCAN: 154, I BELIEVE.

THE COURT: -- IS 154.

BY MR. DUNCAN:

Q OKAY. SO 153, LET'S GO THERE, DR. SOLANKY, AND TALK ABOUT THE MAP WITH THE CIRCLES. THAT WOULD BE DX 153. YOU'VE GOT THAT?

A YEAH.

Q I JUST WANT YOU TO EXPLAIN AGAIN FOR THE RECORD THE IDEA THAT IS TRYING TO BE VISUALLY EXPRESSED HERE AROUND THE TWO CLINICS.

A NOW, THE IDEA HERE IS --

THE COURT: JUST SO THE RECORD IS CLEAR, THIS IS NOT ON THE PROFFER; RIGHT?

MR. DUNCAN: YOU'RE RIGHT, YOUR HONOR. I APOLOGIZE. THIS IS NOT ON THE PROFFER BECAUSE HE CAN --

THE COURT: RIGHT.

MR. DUNCAN: HE'S NOT GOING TO TESTIFY ABOUT CALCULATIONS. HE'S JUST GOING TO TESTIFY ABOUT VISUALLY SPEAKING WHAT THIS IS SUPPOSED TO REPRESENT.

BY MR. DUNCAN:

Q GO AHEAD, DOCTOR.

A NOW, IN THIS I HAVE SHOWN THE CLINIC IN SHREVEPORT AND WHAT 100 MILE RADIUS AROUND IT LOOKS LIKE IN A PREVIOUS EXHIBIT. THE FIRST EXHIBIT I HAVE SHOWN -- I HAVE MENTIONED WHAT THE WOMEN POPULATION IS IN EACH OF THESE PARISHES WHICH ARE COVERED BY THE CIRCLE HERE. AND THE IDEA WAS THAT -- WHEN I WAS PREPARING THIS EXHIBIT, MY GOAL WAS TO SEE WHAT PERCENTAGE OF THE WOMEN WOULD BE INSIDE THE CIRCLE HERE, 100 MILE.

USING THE HEAT MAP AND THE FIRST EXHIBIT, I STARTED COUNTING THEM ONE BY ONE. YOU COULD JUST ADD THE WOMEN OF THE PARISHES WHICH FALL INSIDE THE 100 MILE, DIVIDE IT BY THE TOTAL DISTANCE, THE TOTAL NUMBER OF WOMEN IN LOUISIANA, AND THAT WOULD TELL YOU THE PERCENTAGE OF WOMEN WHO LIVE WITHIN 100 MILE OF THE CLINIC, OF THIS PARTICULAR CLINIC.

Q AND JUST TO BE CLEAR, DOCTOR, I'M NOT ASKING YOU TO TESTIFY AS TO THE CALCULATION THAT YOU ACTUALLY MADE THAT YOU'RE DESCRIBING.

A BUT THE IDEA WAS TO VISUALIZE, TO SEE HOW MANY -- WHAT PERCENTAGE OF WOMEN ARE LIVING WITHIN 100 AND 150 MILES OF THE CLINIC.

THE COURT: WHAT YOU DID HERE, IF I'M UNDERSTANDING, I COULD HAVE TAKEN -- WHAT'S THE INSTRUMENT WHERE YOU HAVE A LITTLE POINT AND YOU'VE GOT A PENCIL AND YOU -- WHAT'S IT?

MR. JOHNSON: PROTRACTOR.

THE COURT: PROTRACTOR. OKAY. YOU COULD DO THE SAME THING WITH A PROTRACTOR AND JUST GET THE SCALE, RIGHT, THE MAP AND YOU CAN DO EXACTLY THE SAME THING; RIGHT?

THE WITNESS: ABSOLUTELY, YOUR HONOR. AND THAT HELPS IN VISUALIZING. LOUISIANA IS NOT SUCH A LARGE STATE. AND LITERALLY WE CAN SEE THAT A CIRCLE OF 150 MILE AROUND SHREVEPORT AND A CIRCLE OF 150 MILE AROUND THE NEW ORLEANS CLINIC, THEY OVERLAP.

THE COURT: OKAY.

A JUST SO THAT I COULD VISUALIZE IT, I COULD PRESENT IT TO THE COURT, THE SIZE OF LOUISIANA, AND EVEN -- AND AS I SAID BEFORE, I STARTED COUNTING THOSE, THAT THIS PARISH IS TOTALLY INSIDE OF LOUISIANA, TOTALLY INSIDE 150 MILE, AND 20,000 WOMEN LIVE HERE. THE NEXT PARISHES, AGAIN, WITHIN THE CIRCLE, THE TENTH PARISH IS HALF INSIDE THE CIRCLE, SO LET ME PRETEND HALF OF THEM. SO THIS WAS JUST A VERY INTUITIVE WAY TO VISUALIZE.

BY MR. DUNCAN:

Q THANK YOU, DOCTOR. NOW, LET'S GO TO --

MR. DUNCAN: NOW, THIS IS PART OF THE PROFFER, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. DUNCAN: AND JUST FOR THE RECORD, DEFENDANT DISAGREES WITH YOUR HONOR'S RULING, WITH ALL RESPECT, AND BELIEVES THAT THIS PRESENTATION OF DATA HERE IN THIS EXHIBIT IS SIMPLY A DIFFERENT WAY OF PRESENTING THE SAME DATA THAT WAS IN THE REPORT.

BY MR. DUNCAN:

Q OKAY. DR. SOLANKY, LET'S GO TO THAT EXHIBIT THAT IS NOT IN EVIDENCE, BUT THIS IS PART OF A PROFFER, SO IT IS DX 154.

A NOW, IN THE -- YOUR HONOR, IN THE LAST EXHIBIT, I HAD THE SHREVEPORT CLINIC AND 150 MILE RADIUS AROUND IT AND I WAS COUNTING WHAT PERCENTAGES OF WOMEN LIVE IN THAT 150 MILE RADIUS, BUT I HAD AVAILABLE TO ME THE ACTUAL DRIVING DISTANCE, THAT WAS IN MY ORIGINAL REPORT, THE ACTUAL DRIVING DISTANCE FROM A CLINIC. SO I DIDN'T HAVE TO DO THAT, DRAW A CIRCLE AND COUNT THE POPULATIONS IN THE PARISHES. I KNOW EXACTLY IN MY REPORT HOW FAR A PARTICULAR WOMAN -- PARISH IS FROM A CLINIC. AND ALL I DID WAS USED THE DATA AND THE NUMBER OF TIMES IT IS LESS THAN 50, THAT'S 33 PERCENT, FOR ALL OF THE WOMEN IN LOUISIANA.

SO THE SAME DATA AND THE SAME IDEA BUT NOW I'M NOT LOOKING AT THE RADIUS AROUND THE CLINIC. I KNOW THE DISTANCE. THAT'S IN MY REPORT. I JUST COMPUTED IT -- REPORTED IT AS A PERCENTAGE AND THAT'S WHAT I HAVE.

Q AND JUST FOR -- I'M SORRY.

A SO LET ME --

Q DOCTOR, JUST ONE SECOND. SORRY TO INTERRUPT. JUST FOR PURPOSES OF THE PROFFER, COULD YOU STATE WHAT YOUR CONCLUSIONS WERE WITH RESPECT TO EACH SCENARIO THERE THE SAME WAY YOU DID WITH THE AVERAGE DRIVING DISTANCES.

MR. DUNCAN: IS THAT OKAY, YOUR HONOR?

THE COURT: YES, IT IS.

MR. DUNCAN: THANK YOU.

A THE FIRST SCENARIO WHICH I HAVE IS IF THE AVAILABLE CLINICS ARE THOSE TWO CLINICS WHICH I HAD IN THE PREVIOUS EXHIBIT AS CIRCLES, THE WHCC IN NEW ORLEANS AND HOPE SHREVEPORT, IF THOSE ARE THE TWO AVAILABLE CLINICS --

THE COURT: ONLY TWO.

THE WITNESS: ONLY TWO.

A -- THEN 33.2 PERCENT OF LOUISIANA WOMEN IN THE AGE GROUP OF 15 TO 44 YEARS WILL DRIVE 50 MILES OR LESS. SO 33 PERCENT OF WOMEN IN THAT AGE GROUP WILL DRIVE 50 MILES OF LESS -- OR LESS IF THOSE ARE THE ONLY TWO CLINICS WHICH ARE AVAILABLE. 67.6 PERCENT WILL DRIVE 100 MILES OR LESS.

YOUR HONOR, IT'S THE SAME IDEA. LOUISIANA, THOSE TWO CLINICS DRAWING A CIRCLE, BUT THIS TIME I'M USING THE DATA FROM MY REPORT, THE EXTRA DRIVING DISTANCE, AND CHECKING IF IT IS LESS THAN 100 OR NOT AND REPORTING IT AS A PERCENT. AND THEN 150 MILES OR LESS WOULD BE 89.4 PERCENT.

BY MR. DUNCAN:

Q OKAY. WHY DON'T YOU GO THROUGH THE NEXT ONE JUST FOR THE PURPOSES OF THE RECORD.

A YOUR HONOR, LET ME TAKE ONE SECOND HERE. LET'S LOOK AT THIS LAST NUMBER, 150 MILES OR LESS. IF YOU RECALL FROM THE LAST EXHIBIT, THOSE TWO CIRCLES, 150 MILES, THEY COVER ALL OF LOUISIANA. SO THE PROPORTION OF WOMEN WHICH ARE LEFT OUTSIDE THOSE TWO CIRCLES IS LITERALLY ABOUT 10 PERCENT. SO MY IDEA WAS THAT FIRST I VISUALIZE IT, MAKE IT EASY TO UNDERSTAND. AND THIS IS THE SAME DATA PRESENTED AS A PERCENTAGE.

Q DOCTOR, IF YOU COULD JUST GO THROUGH THE NEXT FEW BOXES, AND THEN WE'LL --

A IN THE NEXT BOX I HAVE THREE CLINICS, MEANING THE ONE IN NEW ORLEANS, WHCC, THE CAUSEWAY MEDICAL IN METAIRIE, AND HOPE SHREVEPORT, 50 MILES OR LESS WOULD BE DRIVEN BY 38.4 PERCENT OF LOUISIANA WOMEN IN THAT AGE GROUP. 67.6 WILL DRIVE 15 TO -- WILL DRIVE 100 MILES OR LESS. 99 -- I'M SORRY. I MESSED UP. 90.6 WOULD DRIVE 150 MILES OR LESS.

THE COURT: JUST SO I'M CLEAR, THAT'S IF, IN BLOCK TWO, THOSE THREE CLINICS WERE THE ONLY CLINICS LEFT?

THE WITNESS: YES, YOUR HONOR.

BY MR. DUNCAN:

Q THANK YOU. IF YOU COULD JUST GO THROUGH THE REST.

A AND THEN I PICKED THREE OTHER CLINICS, NEW ORLEANS,

BATON ROUGE AND SHREVEPORT, AND I PRESENTED 50 MILES OR LESS AS 52.3 PERCENT, 100 MILES OR LESS AS 81 PERCENT AND 150 MILES OR LESS AS 99.5 PERCENT.

Q AND THE NEXT ONE, DOCTOR.

A YOUR HONOR, FOR THESE THREE, IF I BROUGHT IN THE SAME EXHIBIT, IF I DRAW ANOTHER CIRCLE AROUND BATON ROUGE WITH 150 MILES, THEN YOU WOULD SEE THAT ALL OF LOUISIANA IS COVERED. IN THE NEXT ONE, I HAVE WHCC NEW ORLEANS, CAUSEWAY MEDICAL METAIRIE, DELTA BATON ROUGE, AND HOPE SHREVEPORT. 50 MILES OR LESS IS 57.2 PERCENT, 100 MILES OR LESS IS 81 PERCENT AND 99.5 PERCENT FOR 150 MILES OR LESS.

Q AND THE LAST ONE, DOCTOR?

A IN THE LAST ONE I HAVE THE FIVE CLINICS IN LOUISIANA. IF THOSE FIVE ARE AVAILABLE, 57.2 PERCENT WOULD DRIVE 50 MILES OR LESS, 84.8 PERCENT WOULD DRIVE 100 MILES OR LESS, AND 99.5 PERCENT WOULD DRIVE 100 MILES OR LESS -- OR 150 MILES OR LESS.

Q THANK YOU, DOCTOR.

MR. DUNCAN: YOUR HONOR, MAY WE MAKE THE EXHIBIT PART OF THE PROFFER AS WELL?

THE COURT: YES.

MR. DUNCAN: THANK YOU.

BY MR. DUNCAN:

Q OKAY, DOCTOR. LET'S MOVE ON TO ANOTHER SUBJECT.

THE COURT: WE'RE OFF THE PROFFER NOW, JUST SO

Tab E

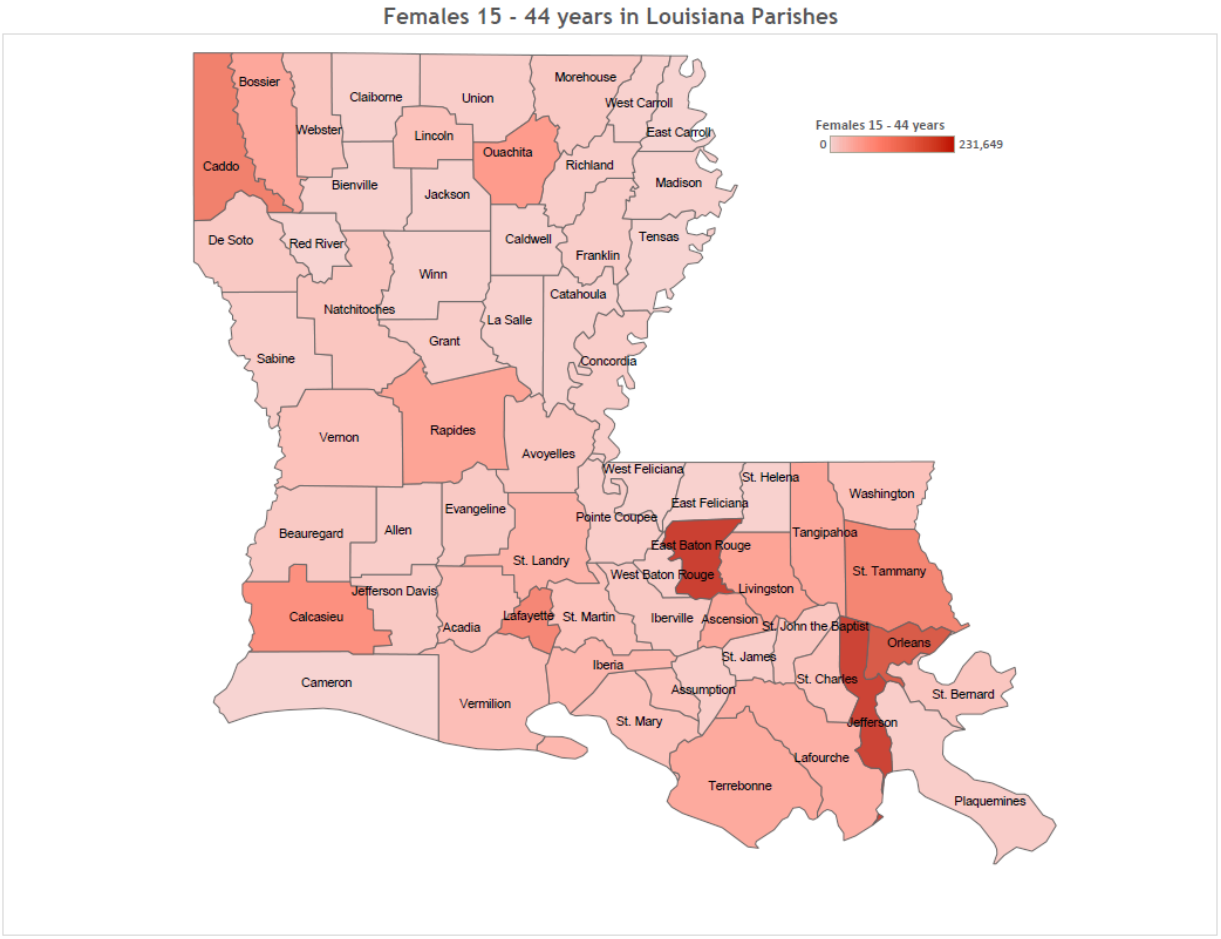
Exhibits to Dr. Solanky's Trial Testimony (Docs. 152, 153)

DX-801

Exhibit B

Relative Population of Women Between 15-44 Years in Louisiana

(Estimates for Year 2013)



Note: Exhibit is based on data referenced in Solanky Expert Report, at p. 5 ¶ 10-12 and Exhibit B on pgs. 28-29.

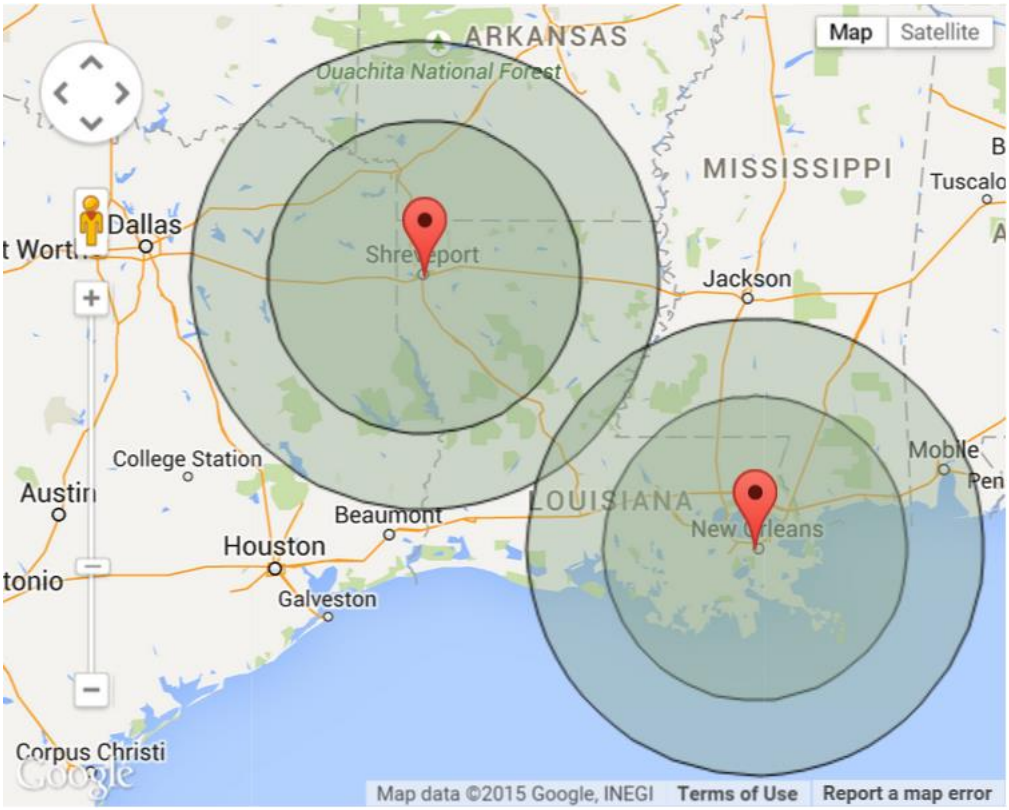
DX-802

Exhibit C

The abortion clinics represented here are

i. **Hope Medical Group [210 Kings Highway, Shreveport, LA 71104], and**
ii. **Women's Health Care Center [2701 General Pershing St, New Orleans, LA 70115].**

The two circles surrounding each clinic have radii of 100 and 150 miles, respectively.



Source: http://www.mapdevelopers.com/draw-circle-tool.php

Note: Exhibit is based on data referenced in Solanky Expert Report, at p. 4 ¶ 8.

Tab F

Testimony of Dr. Sheila Katz (Doc. 191) (excerpts)

A YES, THEY ARE.

Q WHY IS THAT?

A BECAUSE IT'S -- BECAUSE THERE ARE FOUR BARRIERS, AMONG OTHER THINGS, THAT IN THE LIVES OF LOW-INCOME WOMEN, WHICH ARE ALREADY VERY COMPLEX, DELICATE, PRECARIOUS LIVES, AND SO WHILE ONE, OR ONE ASPECT OF ONE MIGHT BE MANAGEABLE, THE -- LIKE ALL OF THE BARRIERS TOGETHER MAKES THE OVERALL TRIP POSSIBLY INSURMOUNTABLE.

MS. LEVINE: THANK YOU, NO FURTHER QUESTIONS.

THE COURT: CROSS EXAMINATION?

MR. DUNCAN: ARE WE READY, YOUR HONOR?

THE COURT: WE'RE READY.

CROSS EXAMINATION

BY MR. DUNCAN:

Q GOOD AFTERNOON, DR. KATZ.

A GOOD AFTERNOON.

Q THANKS FOR BEING WITH US. MY NAME IS KYLE DUNCAN. I AM THE ATTORNEY -- ONE OF THE ATTORNEYS FOR THE DEFENDANT IN THIS MATTER, WHO IS KATHY KLIEBERT, THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HOSPITALS. I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT YOUR EXPERT REPORT AND YOUR EXPERT TESTIMONY HERE TODAY. CAN YOU HEAR ME OKAY?

A YES.

Q MY VOICE IS GOING IN AND OUT. DOCTOR, YOU'VE TESTIFIED THAT YOUR PH.D IS IN SOCIOLOGY; CORRECT?

A YES.
Q SO YOU ARE NOT HERE OFFERING AN OPINION AS A STATISTICIAN, ARE YOU?
A NO.
Q OR AS A DEMOGRAPHER, ARE YOU?
A NO.
Q OR AS A MEDICAL DOCTOR?
A NO.
Q NOW YOU'VE SUBMITTED AN EXPERT REPORT AND YOU'VE GIVEN AN EXPERT OPINION IN THIS LITIGATION AS, AT LEAST ACCORDING TO YOUR REPORT, AN EXPERT IN ISSUES FACING WOMEN LIVING IN POVERTY IN THE UNITED STATES; IS THAT CORRECT?
A YES.
Q AND YOU'VE BEEN OFFERED AS AN EXPERT IN, IF I'M NOT MISTAKEN, THE SOCIOLOGY OF GENDER IN POVERTY?
A YES.
Q YOU'VE BEEN RETAINED BY THE PLAINTIFFS TO PROVIDE THIS OPINION; CORRECT?
A YES.
Q YOU'VE PROVIDED SIMILAR REPORTS AND OPINIONS IN OTHER LITIGATION INVOLVING ADMITTING PRIVILEGES LOST; CORRECT?
A YES.
Q FOR EXAMPLE, YOU MENTIONED THE ALABAMA CASE?
A YES.
Q CAN YOU SPECIFY WHICH OTHER CASES YOU'VE PROVIDED

TESTIMONY IN?

A I'M SURE MY CV IS PART OF THE EVIDENCE. I'VE ALSO WORKED ON A CASE -- I SUBMITTED A DECLARATION IN A CASE IN OHIO AND I'VE SUBMITTED A DECLARATION IN A CASE IN FLORIDA.

Q AND BOTH OF THOSE INVOLVED ADMITTING PRIVILEGES LOST?

A YES. I THINK THEY BOTH DID. I WOULD HAVE TO DOUBLE CHECK.

Q OKAY. NOW TO THE EXTENT YOU REMEMBER, THE REPORTS IN OTHER CASES THAT YOU'VE SUBMITTED THAT INVOLVED ADMITTING PRIVILEGES LOST, HAVE THOSE REPORTS ALWAYS BEEN ON BEHALF OF THE PLAINTIFFS IN THOSE CASES?

A I BELIEVE SO.

Q NOW, YOUR OPINION IN THIS LITIGATION, YOU'VE TESTIFIED, CONCERNS WHETHER THE POVERTY OF WOMEN IN LOUISIANA WILL IMPACT THEIR ABILITY TO TRAVEL TO OBTAIN AN ABORTION; IS THAT ACCURATE?

A YES.

Q TO BE CLEAR, HOWEVER, YOU'RE NOT OFFERING ANY EXPERT OPINION AS TO WHETHER THE ACT HERE, ACT 620, IS MEDICALLY REASONABLE?

A NO.

Q AND YOU'RE NOT OFFERING AN OPINION ABOUT WHETHER ANY PARTICULAR ABORTION PROVIDER IN LOUISIANA CAN OBTAIN ADMITTING PRIVILEGES CAN YOU -- ARE YOU?

A NO.

Q YOU'RE NOT OFFERING AN OPINION ABOUT WHETHER ANY PARTICULAR CLINIC WILL BE FORCED TO CLOSE, ARE YOU?

A NO.

Q DOCTOR, ARE YOU CURRENTLY AWARE OF WHICH ABORTION PROVIDERS IN LOUISIANA HAVE ADMITTING PRIVILEGES AND WHICH DO NOT?

A NO.

Q I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT YOUR METHODOLOGY. YOU'VE OFFERED A LOT OF TESTIMONY, YOU'VE BEEN ASKED A NUMBER OF QUESTIONS ABOUT THE METHODOLOGY THAT YOU TYPICALLY EMPLOY IN YOUR FIELD; RIGHT? NOW THE FIELDS IN WHICH YOU HAVE CONDUCTED RESEARCH ARE POVERTY, WOMEN'S ECONOMIC STATUS AND SOCIAL POLICIES AT THE STATE AND FEDERAL LEVEL IN THE UNITED STATES, IS THAT CORRECT; ACCORDING TO YOUR DECLARATION?

A YES.

Q NOW, YOU'VE DESCRIBED THIS RESEARCH THAT YOU DO IN THESE FIELDS AS QUALITATIVE RESEARCH --

A YES.

Q -- IS THAT RIGHT? AND YOU'VE USED THAT TERM A NUMBER OF TIMES TODAY, QUALITATIVE RESEARCH. THAT'S A FAIR DESCRIPTION OF THE METHODS THAT YOU EMPLOY IN YOUR FIELD?

A YES.

Q QUALITATIVE RESEARCH IS DIFFERENT FROM QUANTITATIVE

RESEARCH, IS IT NOT?

A YES.

Q IS IT FAIR TO SAY THAT QUANTITATIVE RESEARCH IS CONCERNED PRIMARILY WITH PRESENTING DATA, LIKE NUMBERS OR MILES OR FIGURES IN GENERAL; IS THAT FAIR?

A YES.

Q BY CONTRAST, QUALITATIVE RESEARCH USES DATA IN A DIFFERENT WAY; ISN'T THAT RIGHT?

A YES.

Q OKAY. WOULD YOU AGREE THAT QUALITATIVE RESEARCH, THE KIND OF RESEARCH YOU DO, IS INTERESTED IN PEOPLE'S LIVED EXPERIENCES, IN THEIR OWN WORDS, THROUGH IN-DEPTH, INTERVIEWING, FOCUS GROUPS AND PARTICIPANT OBSERVATION?

A YES.

Q SO WHEN YOU DO QUALITATIVE RESEARCH ON WOMEN'S POVERTY ISSUES, YOUR RESEARCH USES THINGS LIKE FOCUS GROUPS, IN-DEPTH INTERVIEWS, PARTICIPANT OBSERVATION, SO THAT YOU CAN QUALITATIVELY UNDERSTAND THE LIVED EXPERIENCES OF THE WOMEN YOU STUDY; IS THAT FAIR?

A YES.

Q SO, FOR EXAMPLE, YOU MENTIONED SOME ONGOING RESEARCH PROJECTS --

A YES.

Q -- EARLIER IN YOUR TESTIMONY? SO LET'S GO THROUGH THOSE QUICKLY, OR NOT QUICKLY, LET'S JUST GO THROUGH THEM.

THE FIRST ONE YOU MENTIONED WAS WOMEN -- RESEARCH WITH RESPECT TO LOW-INCOME WOMEN AND WELFARE IN THE SAN FRANCISCO BAY AREA; RIGHT?

A YES.

Q OKAY. I'M SORRY, FORGIVE ME. I JUST -- ONE MORE GENERAL QUESTION ABOUT YOUR QUALITATIVE RESEARCH AND THEN WE'LL GO TO THE CALIFORNIA STUDY. ANOTHER TERM FOR THE KIND OF RESEARCH THAT YOU DO IS ETHNOGRAPHIC; ISN'T THAT RIGHT?

A YES.

Q IS ETHNOGRAPHIC AND QUALITATIVE MORE OR LESS SORT OF SIMILAR SYNONYMS?

A THEY'RE NOT SYNONYMS EXACTLY. ETHNOGRAPHIC RESEARCH FALLS UNDER QUALITATIVE RESEARCH, BUT QUALITATIVE RESEARCH IS THE BROADER LABEL.

Q I SEE, THANK YOU. SO BACK TO THE CALIFORNIA RESEARCH THAT YOU WERE TALKING ABOUT. THAT'S LISTED IN YOUR CV, AM I RIGHT, UNDER I THINK CAL. WORKS, IS THE LISTING ON YOUR CV?

A YEAH, CAL. WORKS AND HIGHER EDUCATION STUDY.

Q I SEE. AND THAT'S THE CALIFORNIA STUDY WE WERE TALKING ABOUT WITH RESPECT TO LOW-INCOME WOMEN AND WELFARE?

A YES.

Q IN ORDER TO DO THAT QUALITATIVE RESEARCH IN THE CALIFORNIA STUDY, YOU SPENT TWO YEARS IN THE PARTICULAR AREAS THAT YOU WERE STUDYING, DIDN'T YOU?

A NO.
Q DID YOU SPEND MORE THAN TWO YEARS?
A YES.
Q HOW MANY YEARS DID YOU SPEND?
A 2003 UNTIL 2011, BUT I'M DOING FOLLOW-UP INTERVIEWS WITH THEM NOW, SO 10 YEARS, 11 YEARS.
Q OKAY, 10 YEARS. FINE. IN THAT STUDY IS IT TRUE THAT YOU ACTUALLY TRAVELED WITH THE WOMEN YOU WERE STUDYING?
A YES.
Q AND YOU DID THAT, AM I RIGHT, IN ORDER TO FORMULATE YOUR VIEWS ABOUT THE POTENTIAL BARRIERS THOSE WOMEN MIGHT FACE FROM THEIR ECONOMIC DIFFICULTIES?
A YES.
Q I THINK YOU MENTIONED IN YOUR EARLIER ANSWERS ON DIRECT THAT YOU DID INTERVIEWS IN 2006, 2008, 2011, YOU WERE TALKING FACE-TO-FACE WITH THE WOMEN?
A YES.
Q BECAUSE THAT'S WHAT QUALITATIVE ETHNOGRAPHIC RESEARCH IS ALL ABOUT?
A IN-PERSON, OVER THE PHONE, YES.
Q OVER THE PHONE TOO, RIGHT. BECAUSE YOU WANT TO UNDERSTAND THEIR LIVED EXPERIENCE SO YOU CAN -- I'M SORRY. SO YOU WANT TO UNDERSTAND THEIR LIVED EXPERIENCES, THAT'S THE POINT?
A YES.

Q AND DOING THAT KIND OF ON THE GROUND RESEARCH WAS IMPORTANT IN ORDER TO GET TO KNOW THE FIELD THAT YOU WERE STUDYING; ISN'T THAT RIGHT?

A YES.

Q DO YOU KNOW THE NUMBER OF INTERVIEWS THAT YOU CONDUCTED IN THAT STUDY BY ANY CHANCE?

A YES.

Q HOW MANY?

A I DID 45 IN 2006. I DID 25 IN 2008 AND I DID 35 IN 2011.

Q OKAY. THANK YOU. YOU MENTIONED TWO OTHER AREAS OF ONGOING RESEARCH. I'LL PROBABLY GET THIS WRONG AND YOU CAN CORRECT ME, BUT ONE OF THEM I BELIEVE INVOLVED STUDENTS AND PARENTS WITH RESPECT TO COLLEGE EDUCATION?

A STUDENTS WHO ARE PARENTS.

Q STUDENTS WHO ARE PARENTS, SORRY.

A YES.

Q IS THAT ALSO AN AREA IN WHICH YOU DID THIS KIND OF QUALITATIVE ETHNOGRAPHIC RESEARCH?

A IT'S A CURRENT PROJECT THAT I'M WORKING ON AND IT'S PRIMARILY QUALITATIVE, THERE'S SIGNIFICANT MIXED METHODS IN THIS PROJECT AS WELL.

Q I SEE. EXPLAIN TO ME THE DIFFERENCE THERE. YOU'RE DOING SOME QUALITATIVE METHODS BUT THEN YOU'RE DOING SOME OTHER KINDS OF METHODS; WHAT ARE THOSE?

A THE OTHER METHODS IN THIS PROJECT, AND IT'S A PROJECT THAT WE'RE IN -- WE'RE DEVELOPING. BUT WE'LL BE LOOKING AT GRADUATION RATES OF STUDENTS WHO ARE PARENTS, PERCENTAGES. AND WE'RE LOOKING AT THE PROGRAMS AT DIFFERENT COLLEGES AND UNIVERSITIES AND THE COMMUNITY PROGRAMS THAT HELP STUDENTS WHO ARE PARENTS. SO WE'LL BE LOOKING AT SOME OF THEIR INTERNAL DATA AS WELL, SOME OF IT IS QUANTITATIVE.

Q OKAY. SO SOME OF IT -- IN OTHER WORDS, SOME OF IT IS QUANTITATIVE, SOME OF IT IS QUALITATIVE?

A YES.

Q THAT'S WHAT YOU MEAN BY MIXED METHODS?

A YES.

Q I GOT YOU. THE LAST ONE YOU MENTIONED WAS THE AMERICAN DREAM PROJECT, IN WHICH YOU'RE WORKING ON A BOOK CHAPTER ON LOW-INCOME FAMILIES?

A YES, SO I'M DIRECTING, I'M THE LEAD CO-EDITOR OF THE PROJECT WITH TWO OTHER COLLEAGUES WHO ARE AT UNIVERSITIES IN THE WEST AND WE'RE WRITING -- WE'RE CO-WRITING THE FIRST CHAPTER AND THE LAST CHAPTER AND I'LL BE WRITING THE CHAPTER ON LOW-INCOME FAMILIES AND THE AMERICAN DREAM.

Q I SEE. DOES THAT ALSO INVOLVE QUALITATIVE METHODS OF STUDY?

A THAT CHAPTER WILL BE BOTH QUALITATIVE AND SLIGHTLY MIXED METHODS AS WELL.

Q SO IN OTHER WORDS, SOME HARD DATA -- I'M SORRY, I

REMEMBER FROM YOUR DEPOSITION YOU DON'T LIKE THAT TERM. WHAT'S A BETTER TERM THAN, "HARD DATA" TO DIFFERENTIATE THE TWO?

A IT'S QUANTITATIVE OR NUMERICAL DATA IN ADDITION TO THE QUALITATIVE INTERVIEW EXCERPTS.

Q OKAY. SO IT'S MIXED METHODS, SOME NUMERICAL, SOME QUALITATIVE?

A YES.

Q GREAT. SO LET'S TURN TO YOUR OPINION IN THIS LITIGATION AND TALK ABOUT YOUR METHODOLOGY. NOW, YOU'RE OFFERING AN OPINION BASED ON THE POVERTY OF WOMEN IN LOUISIANA; CORRECT?

A YES.

Q AND GENERALLY SPEAKING, IS IT FAIR TO SAY YOUR OPINION CONCERNS WHETHER THE POVERTY OF WOMEN IN LOUISIANA PRESENTS A BARRIER TO THEIR ABILITY TO TRAVEL TO ACCESS ABORTION SERVICES?

A YES.

Q IN ARRIVING AT YOUR OPINION IN THIS CASE, DID YOU CONDUCT FOCUS GROUPS WITH LOUISIANA WOMEN IN ANY PARTICULAR PART OF THE STATE?

A NO.

Q DID YOU CONDUCT ANY FOCUS GROUPS WITH LOUISIANA WOMEN WHO HAD HAD ABORTIONS?

A NO.

Q DID YOU CONDUCT ANY FOCUS GROUPS WITH WOMEN WHO MIGHT BE CONSIDERING HAVING AN ABORTION, BUT WHO WERE CONCERNED ABOUT THE POTENTIAL BARRIERS?

A NO.

Q SO YOU DID NOT CONDUCT ANY FOCUS GROUPS AT ALL WITH ANY LOUISIANA WOMEN?

A NO, NOT IN THIS PROJECT.

Q YOU DID MENTION, HOWEVER, THAT YOU DID SOME WORK WITH LOUISIANA WOMEN POST KATRINA?

A YES.

Q RIGHT. WAS THAT A QUALITATIVE STUDY?

A SO THAT WORK WAS IN THE -- AS PART OF THE WORK THAT I WAS DOING WITH THE COMMUNITY ORGANIZATION THAT I WAS DOING MY DISSERTATION WORK WITH. IT WAS --

Q I'M SORRY, WHAT COMMUNITY ORGANIZATION WAS THAT?

A THE ORGANIZATION IS CALLED, LIFETIME. IT'S LOW-INCOME FAMILIES EMPOWERMENT THROUGH EDUCATION.

Q SURE. I'M, SORRY. GO AHEAD.

A AND THAT WORK WAS SORT OF THE EARLY PART OF THE WORK. THEY WERE TRYING TO FIGURE OUT -- THE LIFETIME HAD GOTTEN A GRANT TO WORK WITH SOME YOUNGER NON-PROFIT -- THEY WEREN'T FORMALLY ORGANIZED INTO NON-PROFIT STATUS YET, SO SOME COMMUNITY GROUPS OF WOMEN IN THREE CITIES ALONG THE GULF COAST, TO UNDERSTAND THEIR EXPERIENCES POST KATRINA, AND TO SEE LIKE WHAT THEY NEEDED IN ORDER TO EITHER FORM AN

ORGANIZATION OR TO DO RESEARCH. SO IT WAS VERY PRELIMINARY WORK, TRYING TO UNDERSTAND THEIR EXPERIENCES.

Q I SEE. THEIR EXPERIENCE IN ORGANIZING, COMMUNITY ORGANIZING?

A NO, THEIR EXPERIENCES IN POVERTY, THEIR EXPENSES POST KATRINA AFTER THE STORM, SO THEIR EXPERIENCES IN THEIR COMMUNITY. WHY SOME OF THEM EVACUATED. WHY SOME OF THEM DIDN'T.

Q DID IT INVOLVE FOCUS GROUPS WITH THOSE WOMEN?

A IT INVOLVED MANY IN-DEPTH CONVERSATIONS ON CONFERENCE CALLS. IT WAS TOO PRELIMINARY TO CALL IT FOCUS GROUPS, BUT THERE WAS A SERIES OF CONFERENCE CALLS OVER ABOUT SIX MONTHS, IN WHICH ALL OF THE ORGANIZATIONS TALKED ABOUT THE ISSUES TOGETHER.

Q AND WITH THE WOMEN WHO WERE THE SUBJECT OF THE STUDY --

A YES.

Q -- I GATHER, ON THE CONFERENCE CALLS?

A YES. FROM ALL THREE CITIES AND FROM THE ORGANIZATION THAT I WORKED WITH.

Q SO THIS WAS A WAY OF DOING THAT KIND OF, NOT FACE-TO-FACE, BUT THAT KIND OF IN-DEPTH INTERVIEW AND TO UNDERSTAND THE LIVED EXPERIENCE OF THESE WOMEN --

A YES.

Q -- RIGHT? OKAY. SO IN FORMULATING -- LET'S TURN

BACK TO THIS CASE. IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU CONDUCT INTERVIEWS WITH LOUISIANA WOMEN IN ANY PARTICULAR PARTS OF THE STATE?

A NO.

Q DID YOU CONDUCT INTERVIEWS -- WELL, DID YOU CONDUCT ANY CONFERENCE CALLS WITH LOUISIANA WOMEN?

A NO.

Q DID YOU CONDUCT ANY INTERVIEWS WITH LOUISIANA WOMEN WHO HAD HAD ABORTIONS?

A NO.

Q SO DID YOU CONDUCT ANY INTERVIEWS WITH LOUISIANA WOMEN WHO WERE CONSIDERING HAVING AN ABORTION SO YOU COULD UNDERSTAND THEIR LIVED EXPERIENCES WITH RESPECT TO THE POTENTIAL BARRIERS, TO ACCESS?

A NO, BUT THERE'S ALSO A RESEARCH PROBLEM WITH TRYING TO FIND THAT POPULATION.

Q OKAY. I UNDERSTAND. SO IN FORMULATING YOUR OPINION IN THIS CASE YOU DIDN'T CONDUCT ANY INTERVIEWS WITH ANY LOUISIANA WOMEN AT ALL?

A NO.

Q NOW, IN YOUR OTHER RESEARCH, IN YOUR QUALITATIVE ETHNOGRAPHIC RESEARCH THAT WE'VE BEEN TALKING ABOUT, I THINK YOU TESTIFIED THAT YOU ACTUALLY SPENT TIME TRAVELING WITH WOMEN, THAT WAS THE CAL. WORKS' STUDY?

A YES.

Q WHY DID YOU SPEND TIME TRAVELING WITH THE WOMEN?

A IT WAS BOTH PART OF THE RESEARCH, BUT IT WAS ALSO PART OF THE WORK THAT I WAS DOING WITH THE NON-PROFIT. AND SO I TRAVELED WITH THEM, EITHER FROM THE SAN FRANCISCO BAY AREA TO SACRAMENTO, WHICH WAS ABOUT 60 MILES OR TRAVELED WITH THEM TO WASHINGTON DC.

Q AND WHY WAS IT IMPORTANT THAT YOU TRAVEL WITH THEM, TO YOUR STUDY?

A TO MY STUDY, THE TRAVELING PART WASN'T AS IMPORTANT TO THE STUDY AS WHAT WE WERE GOING TO DO. AND SO I TRAVELED WITH THEM BECAUSE I WAS GOING TO THE SAME PLACE THEY WERE AND I WAS A RESEARCHER WORKING ON A PROJECT. BUT WHAT -- THE FOCUS OF THE STUDY WAS WHEN WE GOT TO DC OR WHEN WE GOT TO SACRAMENTO.

Q I SEE.

A BUT ALL OF IT'S PART OF, YOU KNOW --

Q I SEE. I MISUNDERSTOOD. I THOUGHT THE STUDY HAD TO DO WITH SOME KIND OF TRAVEL BARRIER THAT THESE WOMEN WERE FACING BECAUSE OF THEIR LOW-INCOME STATUS.

A OTHER PIECES OF THE STUDY DID, YES.

Q TRAVEL BARRIERS TO ACCESS WHAT?

A HEALTH AND HUMAN SERVICES, EDUCATION, JOB TRAINING PROGRAMS, WORK --

Q BUT YOU --

A -- BUYING GROCERIES.

Q I'M SORRY. BUT YOU INTERVIEWED THOSE WOMEN?
A YES. INTERVIEWS AND FOCUS GROUPS AND PARTICIPANT OBSERVATION.
Q OKAY. SO YOU INTERVIEWED THOSE WOMEN, YOU DID FOCUS GROUPS WITH THOSE WOMEN AND YOU OBSERVED THEM --
A YES.
Q -- SO THAT YOU COULD UNDERSTAND THEIR LIVED EXPERIENCES?
A YES.
Q LET'S RETURN TO YOUR OPINION IN THIS CASE. IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU SPEND ANY TIME IN LOUISIANA TRAVELING WITH WOMEN SO THAT YOU COULD UNDERSTAND THEIR LIVED EXPERIENCES?
A NO.
Q DID YOU SPEND ANY TIME TRAVELING WITH WOMEN IN LOUISIANA FROM PARTICULAR PARTS OF THE STATE SO THAT YOU COULD UNDERSTAND WHETHER THEY MIGHT EXPERIENCE ANY PARTICULAR PROBLEMS?
A NO.
Q NOW IN FORMULATING YOUR OPINION IN THIS CASE DID YOU RELY ON ANY STUDIES BY OTHER EXPERTS WHO HAD CONDUCTED FOCUS GROUPS WITH LOUISIANA WOMEN ON THIS TOPIC?
A NO.
Q OKAY. HOW ABOUT, DID YOU RELY ON ANY STUDIES BY OTHER EXPERTS WHO HAD CONDUCTED INTERVIEWS OR CONFERENCE CALLS

WITH ANY LOUISIANA WOMEN ON THIS TOPIC?

A NO.

Q IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU RELY ON ANY STUDIES BY OTHER EXPERTS WHO HAD, YOU KNOW, GOTTEN ON THE GROUND AND TRAVELED WITH LOUISIANA WOMEN SO THEY COULD UNDERSTAND THEIR LIVED EXPERIENCES OF BARRIERS TO ACCESS?

A NO.

Q SO, DOCTOR, I UNDERSTAND FROM TALKING WITH YOU THAT QUALITATIVE RESEARCH IS A CORE PART OF YOUR STUDY; IS THAT RIGHT?

A YES.

Q BUT IN FORMULATING YOUR OPINION IN THIS CASE, IS IT FAIR TO SAY THAT YOU DID NOT PERSONALLY CONDUCT ANY QUALITATIVE OR ETHNOGRAPHIC RESEARCH REGARDING WOMEN AND POVERTY IN THE STATE OF LOUISIANA?

A NO.

Q OKAY. SO IN FORMULATING YOUR OPINION IN THIS CASE, IS IT FAIR TO SAY THAT YOU DID NOT RELY ON ANY QUALITATIVE ETHNOGRAPHIC RESEARCH BY OTHER EXPERTS REGARDING WOMEN AND POVERTY IN THE STATE OF LOUISIANA?

A NO.

Q IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU RELY ON ANY QUALITATIVE ETHNOGRAPHIC RESEARCH BY OTHER EXPERTS THAT FOCUSED ON THE ISSUE OF WOMEN'S POVERTY AND ABORTION ACCESS?

A SO IN QUALITATIVE RESEARCH, ABORTION IS AN ISSUE THAT COMES UP IN OTHER STUDIES. I KNOW THAT SHARON HAYS', *FLAT BROKE WITH CHILDREN*, BRINGS UP THE ISSUE OF ABORTION AND ELAINE BELL KAPLAN'S, *NOT OUR KIND OF GIRL*, BOTH ARE ETHNOGRAPHIC QUALITATIVE STUDIES THAT BRING UP THE ISSUE OF ABORTION ACCESS.

Q SO HAVE YOU EVER DONE IN YOUR ENTIRE CAREER -- I BELIEVE YOU SAID YOU HAVE A 15-YEAR LONG CAREER?

A OF -- YEAH.

Q FIFTEEN YEARS. IN YOUR 15 YEARS OF QUALITATIVE ETHNOGRAPHIC RESEARCH, HAVE YOU EVER DONE ANY SUCH RESEARCH THAT FOCUSES ON THE ISSUE OF ABORTION ACCESS AND POVERTY?

A THE ISSUE OF ACCESS TO ABORTION AND WOMEN'S REPRODUCTIVE HEALTH SERVICES IS UNDER THE RESEARCH -- THE CALIFORNIA-BASED STUDY THAT I'VE DONE AND WILL BE PART OF SOME OF THE OTHER PROJECTS MOVING FORWARD BECAUSE -- SO I HAVE ASKED WOMEN ABOUT REPRODUCTIVE HEALTH SERVICES AND ACCESSING HEALTH AND HUMAN SERVICES. I HAVE NOT DONE ONE STUDY THAT SPECIFICALLY ASKED ABOUT ABORTION, BUT IT'S BEEN UNDER AN UMBRELLA OF ISSUES THAT I'VE ASKED ABOUT IN MY OTHER RESEARCH.

Q I SEE. HAVE YOU PUBLISHED ANY OF THAT RESEARCH?

A SO I'VE PUBLISHED SOME OF THE RESEARCH. MOST OF IT IS FROM THE CALIFORNIA-BASED STUDY IS BEING PREPARED IN A BOOK MANUSCRIPT THAT WILL ALL GET PUBLISHED AT ONCE AS A BOOK.

Q SO IT WILL BE PUBLISHED IN THE FUTURE?

A YES. BUT THERE ARE TWO PIECES OF THAT THAT ARE ALREADY PUBLISHED.

Q DO EITHER OF THE PIECES THAT ARE ALREADY PUBLISHED ADDRESS THE ISSUES OF ABORTION IN A QUALITATIVE MANNER?

A NO.

Q I'D LIKE TO ASK YOU A FEW QUESTIONS ABOUT THE DATA THAT YOU RELIED ON IN FORMULATING YOUR OPINION IN THIS CASE. I THINK YOU'VE BEEN ASKED A NUMBER OF QUESTIONS ABOUT THE DATA ALREADY AND I JUST WANT TO GO BACK OVER SOME OF THAT.

A OKAY.

Q NOW, EARLIER YOU TESTIFIED THAT YOU RELIED ON NATIONAL STATISTICS ABOUT THE PERCENTAGE OF WOMEN HAVING ABORTIONS IN THE UNITED STATES WHO ARE BELOW -- YOU KNOW, WHO ARE AT CERTAIN FEDERAL POVERTY LEVELS; CORRECT?

A YES.

Q YOU WERE, I BELIEVE -- JUST SO YOU UNDERSTAND WHAT I'M GETTING AT, YOU REFERRED TO PAGE 8, PARAGRAPH 14 OF YOUR DECLARATION FOR THOSE. I'LL TURN TO THAT AS WELL.

A YES.

MR. DUNCAN: YOUR HONOR, DO I NEED TO PUT THAT UP ON THE SCREEN?

THE COURT: YOU'RE AT 14?

MR. DUNCAN: YES, YOUR HONOR. PAGE 8, PARAGRAPH 14.

THE COURT: OKAY. NO, YOU DO NOT NEED TO DO THAT FOR ME.

MR. DUNCAN: OKAY. THANK YOU.

BY MR. DUNCAN:

Q NOW, YOU DID NOT RELY ON ANY STATISTICS SHOWING THE INCOME LEVEL OF WOMEN IN LOUISIANA WHO HAD HAD ABORTIONS; RIGHT?

A NO.

Q AND YOU DID NOT RELY ON ANY STATISTICS SHOWING THE RELATIVE INCOME OF WOMEN IN DIFFERENT GEOGRAPHICAL REGIONS OF LOUISIANA WHO HAVE HAD ABORTIONS?

A I DID NOT.

Q AND YOU ALSO DID NOT RELY ON STATISTICS SHOWING THE RELATIVE INCOME LEVEL OF WOMEN WHO HAVE HAD ABORTIONS AT THE FIVE ABORTION CLINICS IN LOUISIANA, DID YOU?

A I DID NOT.

Q SO, FOR EXAMPLE, YOU DID NOT RELY ON STATISTICS SHOWING THE RELATIVE INCOME LEVEL OF WOMEN WHO'VE HAD ABORTIONS AT HOPE MEDICAL CENTER?

A I DID NOT.

Q OR AT CAUSEWAY?

A NO.

Q OR AT BOSSIER CITY?

A NO.

Q OR AT WOMEN'S HEALTH CENTER?

A NO.

Q OR AT DELTA CLINIC?

A NO.

Q AND YOU ALSO -- STRIKE THAT. YOU ALSO DIDN'T RELY ON ANY DATA SHOWING THE RELATIVE INCOME LEVEL OF A SUBSET OF WOMEN WHO HAVE HAD TO TRAVEL FROM OUT OF THE TOWN TO OBTAIN ABORTIONS AT ANY OF THOSE CLINICS; RIGHT?

A I DID NOT.

Q COULD YOU TELL ME WHICH -- STRIKE THAT. WITH RESPECT TO THE STUDIES THAT YOU RELIED ON IN YOUR REPORT, I KNOW YOU HAVE A LIST OF STUDIES, COULD YOU TELL ME WHICH STUDIES YOU RELIED ON THAT ANALYZE THE EFFECT OF INCREASED TRAVEL DISTANCE ON WOMEN'S ABILITY TO OBTAIN AN ABORTION?

A SO I LOOKED AT -- IN THE REPORT, ONE OF THE THINGS THAT I DID WAS CONSIDERED THE LITERATURE, THE WIDE LITERATURE, ON WOMEN TRAVELING TO ACCESS HEALTH AND HUMAN SERVICES. AND SO THERE'S A WHOLE LITERATURE ABOUT -- QUALITATIVE AND QUANTITATIVE, ABOUT WOMEN TRAVELING TO ACCESS SERVICES.

SO IN WRITING THIS REPORT I THOUGHT ABOUT THOSE STUDIES AND USED, YOU KNOW, A COUPLE OF EXAMPLES IN THE REPORT. BUT THERE ARE DEFINITELY MANY IN THE FIELD THAT THINKS ABOUT WHAT BARRIERS EXIST AND WHAT BURDENS EXIST FOR LOW-INCOME WOMEN TO TRAVEL TO ACCESS ANY VARIETY OF HEALTH AND HUMAN SERVICES.

Q I UNDERSTAND. SO WHICH EXAMPLES DID YOU USE?

A IN THE REPORT I USED THE *SHELTON* ARTICLE AS AN EXAMPLE AND I ALSO MADE REFERENCE TO A *DOBIE* ARTICLE.

Q OKAY.

A THESE ARE TWO QUANTITATIVE ARTICLES, BUT THERE IS A WIDE BODY OF QUALITATIVE RESEARCH THAT'S DISCUSSED THROUGHOUT THE ARTICLE THAT ALSO SPEAKS TO THESE ISSUES.

Q OKAY. SO JUST TO BE CLEAR, THE *SHELTON* ARTICLE THAT YOU'RE REFERRING TO IS AT PARAGRAPH 15 OF YOUR DECLARATION?

A YES.

Q THAT'S THE *JAMES D. SHELTON, ET AL*, ARTICLE?

A YES.

Q AND THEN THE *DOBIE* ARTICLE THAT YOU'RE REFERRING TO IS ALSO IN PARAGRAPH 15 ON THE NEXT PAGE, S*HARON A. DOBIE, ET AL?*

A YES.

Q AND AS WE TALKED ABOUT ALREADY YOU ALSO RELIED ON THE *ROBERTS*' REPORT AS WELL?

A NOT IN WRITING THIS REPORT BECAUSE THIS REPORT I SUBMITTED IN NOVEMBER/DECEMBER AND THE *ROBERTS*' ARTICLE CAME OUT IN MAY?

Q WELL, LET'S SEE. THE *ROBERTS*' ARTICLE I'VE GOT IT HERE IN FRONT OF ME. WELL, IT SAYS, ACCEPTED 03, FEBRUARY 2015.

A I READ IT IN MARCH. I THINK THE FINAL VERSION CAME OUT IN THE MAY ISSUE OF *CONTRACEPTION.*

Q OKAY. SO IT CAME OUT IN MAY, OKAY. SO YOU RELIED ON THAT AFTERWARDS?

A YES.

Q NOW IS THE *SHELTON* ARTICLE A QUALITATIVE ARTICLE?

A NO.

Q SO THE *SHELTON* ARTICLE DOESN'T CONSIDER THE LIVED EXPERIENCES OF WOMEN AND HOW THAT REFLECTS THE BARRIERS THEY FACE IN ACCESSING AN ABORTION?

A IT DOES NOT.

Q IT'S A NUMERICAL ARTICLE, IT'S A QUANTITATIVE ARTICLE?

A YES.

Q AND THE *DOBIE* STUDY IS ALSO NOT A QUALITATIVE ARTICLE?

A I BELIEVE THAT.

Q AND THE *ROBERTS*' STUDY IS NOT A QUALITATIVE ARTICLE?

A NO.

Q CAN YOU IDENTIFY BY NAME ANY STUDY YOU RELIED ON THAT IS A QUALITATIVE STUDY ABOUT WOMEN'S LIVED EXPERIENCES WITH ABORTION POVERTY AND ACCESS -- TRAVEL ACCESS?

A NO.

Q LET ME ASK YOU -- SORRY, ONE SECOND. OKAY. I'D LIKE TO ASK YOU JUST SOME MORE SPECIFIC QUESTIONS ABOUT THE OPINION YOU ARE OFFERING IN THIS CASE. NOW, I UNDERSTAND FROM YOUR DECLARATION, I'M SPECIFICALLY LOOKING AT PARAGRAPH 6.

A GIVE ME JUST ONE MINUTE.

Q SURE. SURE. THAT'S FINE.

A YES.

Q SO AS I UNDERSTAND YOUR OPINION YOU'RE SAYING THAT BECAUSE OF THE DISTANCES THAT ACT 620 WILL REQUIRE LOW-INCOME WOMEN IN LOUISIANA TO TRAVEL TO OBTAIN ABORTION SERVICES, THAT THE ACT WILL PREVENT MANY LOWER INCOME WOMEN IN LOUISIANA FROM OBTAINING ABORTIONS THAT THEY OTHERWISE WOULD HAVE BEEN ABLE TO OBTAIN; ISN'T THAT A FAIR SUMMARY OF YOUR OPINION?

A YES.

Q TO BE CLEAR, HOWEVER, YOU'RE NOT OFFERING AN OPINION THAT ANY SPECIFIC PERCENTAGE OF LOUISIANA WOMEN WILL BE PREVENTED BY THEIR POVERTY FROM OBTAINING AN ABORTION?

A NO.

Q IN FACT, YOU'RE ABLE TO SAY ONLY THAT YOU BELIEVE MANY WOMEN IN LOUISIANA WILL BE PREVENTED BY POVERTY FROM OBTAINING AN ABORTION?

A YES.

Q AND YOU CAN'T DEFINE THE TERM, "MANY," IN TERMS OF THE SPECIFIC PERCENTAGES, CAN YOU?

A NO.

Q AND THAT'S BECAUSE YOU DON'T HAVE ANY DATA TO SHOW HOW MANY WOMEN IN LOUISIANA WILL ACTUALLY BE PREVENTED BY POVERTY FROM TRAVELING TO OBTAIN AN ABORTION?

A NO. AND I THINK THAT THAT DATA WOULD BE VERY HARD TO OBTAIN.

Q HAVE YOU THOUGHT ABOUT HOW TO EVEN CONSTRUCT A

METHODOLOGY TO GET AT THAT DATA?

A YES.

Q HAVE YOU COME UP WITH AN ANSWER?

A NO. I'VE COME UP WITH MANY ANSWERS, BUT UNTIL I TRY TO DO IT...

Q OKAY. YOU'VE THOUGHT ABOUT POSSIBILITIES, BUT YOU HAVEN'T DONE ANY?

A NO. I HAVE THREE BOOKS IN PROGRESS. I NEED TO FINISH ONE OF THEM.

Q I FEEL YOUR PAIN. OKAY. YOU'D AGREE WITH ME THAT SOME WOMEN IN LOUISIANA ARE ALREADY HAVING TO TRAVEL TO OBTAIN ABORTION SERVICES?

A YES.

Q BUT YOU CAN'T TELL THE COURT HOW MANY WOMEN WHO ARE SEEKING ABORTIONS ARE ACTUALLY POOR, CAN YOU?

A I CAN'T GIVE YOU AN EXACT NUMBER. I THINK BASED ON THE DATA THAT'S AVAILABLE NATIONALLY AND THE HIGH POVERTY RATE IN LOUISIANA, THAT THE OVERWHELMING MAJORITY OF THE WOMEN WHO ARE SEEKING ABORTIONS IN LOUISIANA ARE VERY POOR.

Q OKAY, DOCTOR. YOU JUST SAID IN YOUR OPINION THE OVERWHELMING MAJORITY OF WOMEN IN LOUISIANA?

A YES.

Q THAT'S YOUR TESTIMONY?

A YES.

Q YOU RECALL TAKING A DEPOSITION IN THIS CASE?

A YES.

Q AND IN THAT DEPOSITION YOU WERE UNDER OATH?

A YES.

Q LET'S TAKE A LOOK AT YOUR DEPOSITION. HERE WE GO WITH THE ELMO PROCESS.

MR. DUNCAN: WOULD SOMEONE -- IS DR. KATZ'S DEPOSITION CONFIDENTIAL?

MS. JAROSLOW: IT IS NOT, YOUR HONOR.

MR. DUNCAN: THANK YOU.

BY MR. DUNCAN:

Q WE'RE GOING TO GO THROUGH THIS EXERCISE, DOCTOR, OF LOOKING AT THIS DEPOSITION. HAVE YOU REVIEWED YOUR DEPOSITION TRANSCRIPT?

A YES.

Q OKAY. I'LL GIVE YOU A PAGE NUMBER IN JUST A SECOND. I JUST WANT TO MAKE SURE YOU RECOGNIZE THE FIRST PAGE OF YOUR DEPOSITION. LET'S MAKE SURE YOU CAN SEE THIS AND READ THIS.

A YES.

Q THIS IS THE FIRST PAGE OF YOUR DEPOSITION; DO YOU RECOGNIZE THAT?

A YES.

Q OKAY. GREAT. NOW, LET'S GO TO PAGE 84 OF YOUR DEPOSITION. SORRY, BEAR WITH ME FOR A SECOND. 84, LINES 1 THROUGH 6. DO YOU SEE THAT?

A YES.

Q OKAY.

MR. DUNCAN: YOUR HONOR, IS IT OKAY IF I READ THE DEPOSITION OR WOULD YOU PREFER THAT THE WITNESS READ IT?

THE COURT: I SEE IT. I'M READING ONE THROUGH FIVE AND YOU CAN JUST ASK HER ABOUT IT.

MR. DUNCAN: OKAY.

BY MR. DUNCAN:

Q WHY DON'T YOU READ LINES -- WHAT DID I SAY, ONE THROUGH SIX?

THE COURT: ONE THROUGH SIX.

A SO THE QUESTION IS, "DO YOU KNOW HOW MANY WOMEN WHO ARE SEEKING ABORTIONS IN LOUISIANA CURRENTLY ARE POOR?" I SAID, "I DON'T KNOW." THE QUESTION IS, "WOULD YOU HAVE NO WAY OF TO KNOWING THAT, WOULD YOU?" "NO."

BY MR. DUNCAN:

Q OKAY.

A I BELIEVE THE ANSWER THAT I GAVE YOU JUST NOW IS THE SAME ANSWER.

Q YOU BELIEVE -- I'M SORRY, DOCTOR. YOU BELIEVE SAYING THAT THE OVERWHELMING NUMBER OF WOMEN WHO ARE SEEKING ABORTIONS ARE POOR IS THE SAME ANSWER AS NO AND I DON'T KNOW?

A NO. I SAY -- I THINK THAT I DON'T HAVE AN EXACT NUMBER FOR YOU, BUT I THINK THAT GIVEN NATIONAL DATA, WHICH IS WHAT I SAID A MINUTE AGO, AND THE POVERTY RATE, THAT I WOULD THINK THAT THE NUMBER WOULD BE OVERWHELMING MAJORITY. BUT DO

I HAVE AN EXACT NUMBER? NO, I DON'T HAVE THAT EXACT NUMBER.

Q I UNDERSTAND, DOCTOR. IN YOUR DEPOSITION OF COURSE YOU SAID, I DON'T KNOW.

A OKAY.

Q THANK YOU. JUST BEAR WITH ME JUST A SECOND. JUST ONE SECOND. DOCTOR, YOU ALSO DON'T HAVE DATA REGARDING THE INCOME STATUS OF THE PATIENT BASE AT ANY PARTICULAR ABORTION CLINIC IN LOUISIANA, DO YOU?

A I DO NOT.

Q SO, FOR EXAMPLE, YOU DID NOT RELY ON DATA SHOWING WHAT PERCENTAGE OF THE WOMEN WHO OBTAINED ABORTIONS AT HOPE MEDICAL IN THE PAST YEAR ARE BELOW THE FEDERAL POVERTY LEVEL?

A I DO NOT.

Q OR BELOW 200 PERCENT OF THE FEDERAL POVERTY LEVEL?

A I DO NOT.

Q AND YOU DID NOT RELY ON DATA OF THAT NATURE FOR ANY OTHER ABORTION CLINIC IN LOUISIANA; CORRECT?

A NO.

Q NOW, DOCTOR, YOU ALSO DID NOT RELY ON DATA SHOWING THAT WOMEN SEEKING ABORTIONS AT ANY PARTICULAR CLINIC IN LOUISIANA EXPERIENCED PARTICULAR OBSTACLES IN GETTING TO THOSE CLINICS? AND BY PARTICULAR OBSTACLES, I MEAN OBSTACLES THAT ARE NOT SHARED BY WOMEN IN OTHER PARTS OF THE STATE.

A NO.

Q FOR INSTANCE, YOU DIDN'T RELY ON DATA THAT WOMEN WHO

LIVE, SAY, IN SOUTHWEST LOUISIANA EXPERIENCED SPECIAL OR PARTICULAR BURDENS IN TRAVELING TO OBTAIN ABORTIONS, BURDENS THAT WOMEN IN OTHER PARTS OF THE STATE DON'T?

A NO.

Q YOU ALSO DON'T HAVE DATA, DO YOU, FROM ANY PARTICULAR CLINIC DOCUMENTING THE SPECIAL OBSTACLES OBSERVED WITH THEIR PARTICULAR PATIENT BASE IN OBTAINING ABORTIONS?

A I DON'T.

Q NOW, JUST TO GO BACK TO YOUR GENERAL OPINION. YOUR GENERAL OPINION IS THAT LOW-INCOME STATUS CAN PREVENT WOMEN FROM TRAVELING TO OBTAIN AN ABORTION; IS THAT RIGHT?

A YES.

Q JUST TO UNDERSTAND YOUR OPINION A LITTLE BETTER, ARE YOU OFFERING AN OPINION THAT THERE'S A PARTICULAR LEVEL OF POVERTY BEYOND WHICH A WOMAN WOULD BE PREVENTED FROM OBTAINING AN ABORTION?

A COULD YOU REPHRASE THAT?

Q SURE. ARE YOU OFFERING AN OPINION THAT THERE'S A PARTICULAR LEVEL OF POVERTY BEYOND WHICH IS SORT OF THE TIPPING POINT, IT WILL PREVENT A WOMAN AT THAT POINT, LET'S SAY 150 PERCENT OF THE POVERTY LEVEL?

A OKAY. I THINK HOW YOU'RE PHRASING IT MAKES IT CONFUSING.

Q OKAY, FAIR ENOUGH. I'LL JUST MOVE ON. DOCTOR, AS YOU SIT HERE TODAY ARE YOU ABLE TO TELL THE COURT IN YOUR

OPINION WHAT SPECIFIC -- WHAT SPECIFIC PERCENTAGE OF LOUISIANA WOMEN WOULD HAVE THEIR ACCESS TO ABORTION IMPEDED BY ACT 620 BECAUSE OF THEIR POVERTY?

A NO.

MR. DUNCAN: NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

MS. LEVINE: NO REDIRECT, YOUR HONOR.

THE COURT: OKAY. I ONLY HAVE A COUPLE OF QUESTIONS, DOCTOR. ONE, ON PARAGRAPH 14 OF YOUR REPORT, PAGE 8, WHICH IS PAGE 2480; COULD YOU TURN TO THAT?

THE WITNESS: PARAGRAPH 14, ON PAGE 8?

THE COURT: RIGHT.

THE WITNESS: OKAY.

THE COURT: ARE YOU THERE?

THE WITNESS: YES, I AM.

THE COURT: YOU'VE GOT NATIONALLY 2008, 42 PERCENT OF THE WOMEN HAVING ABORTIONS IN THE U.S. HAD INCOMES BELOW THE FEDERAL POVERTY LEVEL AND ANOTHER 27 PERCENT HAD INCOMES BELOW 200 PERCENT OF THE FEDERAL POVERTY LEVEL. IS THE 27 PERCENT INCLUDED IN THE 42 PERCENT?

THE WITNESS: NO. IT'S 42 PLUS 27.

THE COURT: ALL RIGHT. SO IF YOU TOOK 42 AND 27, WHAT WOULD THE COMBINED NUMBER -- HOW WOULD YOU DESCRIBE THE COMBINED NUMBER?

THE WITNESS: SIXTY-NINE PERCENT.

THE COURT: I KNOW, I CAN EVEN DO THAT MATH.

THE WITNESS: ALMOST THREE-QUARTERS.

THE COURT: ALMOST THREE-QUARTERS EQUALS WHAT? HOW WOULD YOU DESCRIBE THOSE THREE-QUARTERS?

THE WITNESS: I WOULD THINK THAT THAT'S THE MAJORITY.

THE COURT: OF?

THE WITNESS: OF WOMEN WHO ARE SEEKING -- ARE HAVING ABORTIONS IN THE UNITED STATES HAVE INCOMES BELOW 200 PERCENT OF THE POVERTY LINE.

THE COURT: WHAT IS IT THAT MAKES YOU BELIEVE THAT THAT -- AS YOU SAY, I WOULD EXPECT THE PERCENTAGE TO BE MUCH HIGHER IN LOUISIANA -- FIRST OF ALL, THE 69 PERCENT IS OF WOMEN OF REPRODUCTIVE AGE? OR WOMEN --

THE WITNESS: THE 69 PERCENT IS OF WOMEN WHO HAD ABORTIONS.

THE COURT: WHO HAD ABORTIONS.

THE WITNESS: WHO HAD ABORTIONS WERE UNDER THE 200 PERCENT OF THE FEDERAL POVERTY LINE. AND THIS IS OF THE UNITED STATES AS A WHOLE.

THE COURT: RIGHT.

THE WITNESS: SO IF WE THINK ABOUT THE FACT THAT LOUISIANA IS THE THIRD POOREST STATE IN THE COUNTRY AND THAT WE KNOW OVERALL IN THE U.S. THAT 69 PERCENT OF WOMEN WHO ARE HAVING ABORTIONS HAVE INCOMES BELOW 200 PERCENT OF THE POVERTY

LINE. THIS IS WHY I'M SAYING THAT I THINK THAT THE NUMBER FOR LOUISIANA WOULD BE AN OVERWHELMING MAJORITY.

WHEN I'VE HAD DATA FROM OTHER STATES, THOSE NUMBERS HAVE BEEN -- THAT HAVE LOWER POVERTY RATES THAN LOUISIANA, BUT CLOSE, THAT NUMBER HAS BEEN BETWEEN 85 AND 90 PERCENT OF WOMEN WHO HAD ABORTIONS IN THOSE STATES HAD POVERTY -- HAD AN INCOME BELOW 200 PERCENT OF THE POVERTY LINE. SO LOUISIANA IS EVEN POORER THAN THOSE STATES.

THE COURT: OKAY. AND -- THAT'S ALL. THANK YOU.

THE WITNESS: OKAY. THANK YOU.

THE COURT: ANY FOLLOW-UP QUESTIONS?

MR. DUNCAN: NO, YOUR HONOR.

THE COURT: THANK YOU, MA'AM. YOU MAY STAND DOWN.

THE WITNESS: THANK YOU.

THE COURT: CALL YOUR NEXT WITNESS.

MR. DUNCAN: YOUR HONOR, I BELIEVE WE'RE GOING TO CALL THE SECRETARY?

MS. DOUFEKIAS: YES.

MR. DUNCAN: MAY I JUST GO OUT AND SEE -- I HAD THE SECRETARY OUTSIDE.

THE COURT: ABSOLUTELY.

MR. DUNCAN: MR. JOHNSON JUST -- DIDN'T WANT HER TO COME IN.

THE COURT: COME FORWARD, SECRETARY KLIEBERT AND MS. CAUSEY WILL SWEAR YOU IN.

Tab G

Testimony of Dr. John Doe 3 (Doc. 190) (excerpts)

A THAT IS CORRECT.
Q HOW LONG HAVE YOU WORKED FOR HOPE?
A I STARTED WORKING FOR HOPE 34 YEARS AGO.
Q OKAY.
A IN 1981.
Q NOW, AS THE MEDICAL DIRECTOR, WHAT ARE YOUR DUTIES AND RESPONSIBILITIES?
A IT'S PRIMARILY MY RESPONSIBILITY TO SEE TO IT THAT ALL OF THE MEDICAL CARE PROVIDED TO THE PATIENTS IS APPROPRIATE AND TO SCREEN AND TRAIN TO BE CERTAIN THAT OUR NURSES AND ALL OF THE PERSONNEL THAT HAVE ANYTHING TO DO WITH THE MEDICAL ASPECT OF OUR PRACTICE ARE UP TO -- ARE WELL TRAINED, ARE ADEQUATELY TRAINED. AND THEN IT'S ALSO MY RESPONSIBILITY TO REVIEW APPLICATIONS BY ANY OF THE PHYSICIANS TO BE ADDED TO OUR STAFF.
Q AND DO YOU ALSO PROVIDE MEDICATION AND SURGICAL ABORTIONS AT HOPE?
A YES, WE DO.
Q AND WHAT IS YOUR SCHEDULE WHEN YOU'RE ON THE PREMISES AT HOPE?
A I'M SORRY?
Q WHEN ARE YOU AT HOPE, WHICH DAYS PER WEEK?
A I'M THERE ON THURSDAY AFTERNOON AND ALL DAY ON SATURDAY.
Q IN AN AVERAGE WEEK, ABOUT HOW MANY PATIENTS DO YOU

SEE AT HOPE?

A WELL, ON THE AVERAGE I SEE ABOUT 20 TO 30 PATIENTS A WEEK. JOHN DOE NUMBER 1 SEES PATIENTS ON THOSE SAME DAYS THAT I'M THERE AND SEES AN EQUAL OR GREATER NUMBER THAN I DO ON THOSE DAYS.

JOHN DOE NUMBER 1 WAS ON VACATION LAST WEEK, SO I HAD THOSE TWO DAYS COMPLETELY TO MYSELF AND SAW 64 PATIENTS ON THOSE DAYS.

Q AND JOHN DOE NUMBER 1 IS YOUR COLLEAGUE AND THE ONLY OTHER PHYSICIAN WHO PRESENTLY PROVIDES ABORTIONS AT HOPE; CORRECT?

A THAT IS CORRECT.

Q WHERE DID YOU RECEIVE YOUR TRAINING IN SURGICAL ABORTION METHODS?

A FROM THE ORIGINAL OWNER OF HOPE MEDICAL GROUP WHO WAS -- ONE OF THE OWNERS WAS FROM A SIMILARLY NAMED CLINIC, HOPE CLINIC, UP IN ST. LOUIS, DR. HECTOR ZEVALLOS. AND HE CAME DOWN AND SHOWED US HOW TO DO ABORTION TECHNIQUES.

Q IN ADDITION TO THAT, DID YOU HAVE A COLLEAGUE ON THE FACULTY OF LSU MEDICAL SCHOOL WHO AT THE TIME WAS PROVIDING ABORTIONS AT HOPE?

A YES. THAT ACTUALLY IS JOHN DOE NUMBER 2, I BELIEVE, IF I CAN REMEMBER OUR NUMBERS.

Q I THINK THAT'S CORRECT.

A OKAY. AND JOHN DOE NUMBER 2 ORIGINALLY APPROACHED

PRIVILEGES AT MANY HOSPITALS IN THE SHREVEPORT AREA?

A THAT IS CORRECT, RIGHT.

Q AND OVER THAT SAME PERIOD IN THE SHREVEPORT AREA, YOU'VE PROVIDED ABORTION SERVICES; ISN'T THAT CORRECT?

A THAT IS CORRECT.

Q SO IS IT FAIR TO SAY YOUR PROVIDING ABORTION SERVICES IN THE SHREVEPORT AREA WAS NOT AN IMPEDIMENT TO YOUR HAVING ADMITTING PRIVILEGES AT ANY OF THESE HOSPITALS?

A THAT IS CORRECT. AS FAR AS I KNOW.

Q THANK YOU. I'D LIKE TO JUST ASK YOU A FEW MORE QUESTIONS ABOUT YOUR GENERAL PRACTICE AT HOPE JUST TO UNDERSTAND. NOW, YOU PROVIDE ABORTIONS AT HOPE THROUGH 16 WEEKS, SIX DAYS LAST MENSTRUAL PERIOD; RIGHT?

A THAT'S CORRECT.

Q AND YOU WORK AT HOPE PROVIDING ABORTIONS ONE AND HALF DAYS A WEEK, THURSDAY AFTERNOONS AND ALL DAY SATURDAY?

A THAT IS CORRECT.

Q AND THESE SERVICES, THESE ABORTION SERVICES YOU PROVIDE AT HOPE, CONSTITUTE ABOUT 5 TO 10 PERCENT OF YOUR TOTAL MEDICAL PRACTICE; IS THAT RIGHT?

A IT'S ABOUT 10 PERCENT. IT ACTUALLY HAS SOMETIMES BEEN A LITTLE BIT MORE. IT DEPENDS ON HOW YOU CLASSIFY IT. BUT IF YOU'RE TALKING ABOUT REMUNERATION, THEN IT ACCOUNTS FOR ABOUT 10 TO 15 PERCENT SOMETIMES.

Q OKAY. THANKS. AND IN TERMS OF YOUR TOTAL INCOME AS

A PHYSICIAN, IS IT ALL RIGHT TO SAY ABOUT 10 TO 20 PERCENT OF YOUR INCOME COMES FROM YOUR WORK DOING ABORTIONS AT HOPE?

A YES.

Q OKAY. AND THE COMPENSATION THAT YOU RECEIVE FROM HOPE DEPENDS ON THE NUMBER OF ABORTIONS YOU PROVIDE; IS THAT RIGHT?

A THE COMPENSATION I RECEIVE FOR ANYTHING I DO DEPENDS ON THE NUMBER OF PROCEDURES I DO. SO, IN OTHER WORDS, I GET MORE -- THE MORE BABIES I DELIVER, THE MORE MONEY I MAKE BECAUSE I MAKE -- I CHARGE PER DELIVERY. THE MORE PELVIC EXAMS I DO AND PAP SMEARS, THE MORE MONEY I MAKE. THE MORE SURGERIES I DO, THE MORE MONEY I MAKE. SO, YES --

Q RIGHT. I UNDERSTAND, DOCTOR.

A THAT'S JUST THE WAY ALL -- THAT'S THE WAY ALL OBSTETRICS AND THAT'S THE WAY A FEE-FOR-SERVICE METHOD OF REMUNERATION IS -- IS ACCOMPLISHED.

Q I UNDERSTAND THAT, DOCTOR. THAT'S VERY HELPFUL. SO JUST TO GO BACK TO MY QUESTION, YOUR COMPENSATION FROM HOPE DEPENDS ON THE NUMBER OF ABORTIONS YOU PROVIDE; RIGHT?

A YES, IT DOES.

Q NOW, ASSUMING EVERYTHING IS GOING SMOOTHLY WITH THE ABORTION PROCEDURE, YOU ARE CAPABLE OF DOING ABOUT SIX PROCEDURES IN ONE HOUR; IS THAT RIGHT?

A THAT'S CORRECT.

Q AND I KNOW YOU TESTIFIED EARLIER THAT -- WELL, LET

ME JUST ASK YOU. DID I UNDERSTAND CORRECTLY WHEN YOU TESTIFIED EARLIER THAT THE AVERAGE OF THE PATIENTS YOU MIGHT SEE AT HOPE IN A WEEK IS 20 TO 30?

A THAT'S CORRECT.

Q BUT HAVE THERE BEEN OCCASIONS AT HOPE WHEN YOU'VE PROVIDED BETWEEN 40 AND 50 ABORTIONS IN ONE DAY?

A YES.

Q NOW, AT HOPE -- I THINK YOU TESTIFIED ABOUT THIS EARLIER, BUT I JUST WANT TO CLARIFY. AT HOPE, YOU PROVIDE ABORTIONS TO PATIENTS WHO TRAVEL FROM OUT OF STATE; ISN'T THAT RIGHT?

A THAT IS CORRECT.

Q SO FOR PATIENTS WHO TRAVEL TO HOPE FROM TEXAS?

A YES.

Q AND FROM ARKANSAS?

A YES.

Q AND FROM MISSISSIPPI?

A YES.

Q FROM ANY OTHER STATES THAT YOU KNOW OF?

A NOT THAT I KNOW OF FOR SURE.

Q OKAY. NOW, AT HOPE, YOU ALSO PROVIDE ABORTIONS TO PATIENTS WHO TRAVEL FROM CITIES INSIDE LOUISIANA TO HOPE SUCH AS BATON ROUGE; RIGHT?

A THAT IS CORRECT.

Q AND NEW ORLEANS?

Tab H

Testimony of Dr. John Doe 2 (Doc. 191) (excerpts)

MADE THE DECISION TO LEAVE THE PRACTICE.

Q WHEN DID YOU BEGIN PERFORMING ABORTIONS?

A 1980.

Q AND DO YOU STILL PERFORM ABORTIONS TODAY?

A YES, I DO.

Q WHERE DO YOU CURRENTLY PROVIDE ABORTIONS?

A AT BOSSIER MEDICAL SUITE IN BOSSIER CITY, LOUISIANA AND AT CAUSEWAY MEDICAL CLINIC IN METAIRIE, LOUISIANA.

Q WHEN DO YOU WORK AT BOSSIER MEDICAL SUITE?

A I WORK AT BOSSIER EVERY -- EXCUSE ME, EVERY WEEK AND I WORK AT CAUSEWAY MEDICAL CLINIC TWO WEEKENDS A MONTH.

Q CAN YOU EXPLAIN FOR THE COURT HOW YOU MANAGE YOUR WORK SCHEDULE BETWEEN CAUSEWAY AND BOSSIER?

A WELL, SUNDAYS AND MONDAYS ARE MY BASIC WEEKENDS. TUESDAY THROUGH SATURDAY, WHEN I'M NOT GOING TO NEW ORLEANS -- TO METAIRIE, TO WORK, I WORK AT BOSSIER. ON WEEKS THAT I GO TO THE CLINIC IN METAIRIE FOR FRIDAY AND SATURDAY WORK, I WORK TUESDAY, WEDNESDAY AND THURSDAY AT BOSSIER MEDICAL -- BOSSIER MEDICAL SUITE.

Q AND APPROXIMATELY HOW MANY PROCEDURES HAVE YOU PERFORMED AT BOSSIER IN THE LAST YEAR?

A I BELIEVE LAST YEAR IT WAS AROUND 550.

Q ARE THERE ANY OTHER DOCTORS WHO PERFORM ABORTIONS AT BOSSIER?

A NO.

Q APPROXIMATELY HOW MANY PROCEDURES DO YOU PERFORM AT CAUSEWAY -- OR DID YOU PERFORM AT CAUSEWAY IN THE LAST YEAR?

A I BELIEVE IT WAS AROUND 450. THAT'S A BALL PARK FIGURE.

Q DO YOU KNOW -- WHEN I REFER TO DR. DOE NUMBER 4, DO YOU KNOW WHO THAT IS?

A YES.

Q DOES HE ALSO PERFORM ABORTIONS AT CAUSEWAY?

A YES.

Q AND TO YOUR KNOWLEDGE DOES HE CURRENTLY HAVE ADMITTING PRIVILEGES AT A HOSPITAL WITHIN 30 MILES OF CAUSEWAY?

A I DO NOT BELIEVE HE DOES, NO.

Q DO YOU KNOW WHETHER HE HAS APPLIED FOR PRIVILEGES?

A IT IS MY UNDERSTANDING THAT HE HAS, YES.

Q IS IT YOUR UNDERSTANDING THAT HE APPLIED FOR PRIVILEGES AS A RESULT OF HOUSE BILL 388?

A THAT IS MY UNDERSTANDING.

Q WHEN I REFER TO HOUSE BILL 388, WHICH SOMETIMES IS ALSO REFERRED TO AS ACT 620 IN THIS CASE, DO YOU KNOW WHAT I'M TALKING ABOUT?

A YES.

Q COULD YOU DESCRIBE FOR THE COURT YOUR UNDERSTANDING OF HOUSE BILL 388?

A WELL, HOUSE BILL 388, THE PART THAT I THINK IS MOST

Q DOES IT BECOME APPARENT IN YOUR DISCUSSIONS WITH THE PATIENTS WHERE THEY COME FROM WHEN THEY TRAVEL TO THE CLINIC?

A YES.

Q AND WHERE DO YOUR PATIENTS COME FROM?

A OBVIOUSLY, I THINK THE PRIMARY SOURCE IS LOUISIANA, BUT WE HAVE A GOOD NUMBER OF PATIENTS FROM ALL OF THE SURROUNDING STATES; TEXAS, ARKANSAS, MISSISSIPPI. I'VE HAD PATIENTS FROM MOBILE, ALABAMA. I'VE EVEN HAD PATIENTS FROM WEST TEXAS, WHICH I HAD A PATIENT FROM AMARILLO. SO IT'S A LARGE GEOGRAPHIC AREA.

Q DO YOUR PATIENTS EVER DISCUSS HOW THEY CAME TO THE CLINIC?

A HOW THEY CAME TO THE CLINIC?

Q YES. LET ME ASK A BETTER --

A I'M NOT EXACTLY SURE WHAT YOU MEAN.

Q DO YOUR PATIENTS EVER DISCUSS WHETHER IT'S DIFFICULT FOR THEM TO GET TO THE CLINIC?

A OH, YES. YES. I MEAN ESPECIALLY WITH THE REQUIREMENTS FOR THE 24 HOUR COUNSELING PRIOR TO THE PROCEDURE, MANY OF THESE PATIENTS, MOST OF THEM HAVE TO MAKE, YOU KNOW, TWO TRIPS TO THE CLINIC OR COME IN, SPEND THE NIGHT -- IT'S A TWO DAY PROCESS. SO A LOT OF THEM DISCUSS THE HARDSHIPS OF JUST PHYSICALLY BEING ABLE TO GET TO THE CLINIC.

Q DOCTOR, WHERE DO YOU LIVE?

A I LIVE IN BOSSIER CITY, LOUISIANA.

DOCUMENTS FROM THAT COMMUNICATION AND THESE ARE DOCUMENTS, MAYBE YOU'VE BEEN IN THIS PART OF THE BINDER ALREADY, BUT I JUST WANT TO ORIENT YOURSELF TO IT. THESE DOCUMENTS ARE GENERALLY IN THE JOINT EXHIBIT BINDER NUMBER FOUR AND THEY GO FROM DOCUMENTS 169 THROUGH 184. I'LL LET YOU JUST PAUSE AND ORIENT YOURSELF AND LET THE COURT AND EVERYBODY ELSE DO THAT FOR A SECOND. LET ME KNOW WHEN YOU'VE SORT OF PUT YOUR HANDS ON THOSE, DOCTOR. ARE YOU THERE, DOCTOR?

A YOU SAID 164?

Q I'M SORRY; JOINT EXHIBIT 169, THAT'S WHERE WE'RE GOING TO START AND THEY GO ALL THE WAY THROUGH 184. JUST WANTED YOU TO SEE WHERE THEY ARE IN THE GENERAL UNIVERSE OF DOCUMENTS. DO YOU SEE THAT?

A YES, I AM AT -- I AM AT THAT POINT. I DO SEE THAT.

Q GREAT.

MR. DUNCAN: NOW I BELIEVE THAT EVERYTHING I'M REFERRING TO IS, FOR THE BENEFIT OF COURT AND COUNSEL, IS GOING TO BE CONFIDENTIAL, SO IT SHOULDN'T BE DISPLAYED ON THE GENERAL -- ON THE AUDIENCE DISPLAY, THE GALLERY, BUT IT CAN BE DISPLAYED ON OUR COMPUTERS.

THE COURT: OKAY.

BY MR. DUNCAN:

Q LET'S START AT JX 169, DOCTOR.

A OKAY.

Q I'M GOING TO LOOK AT THAT ON MY HARD COPY, BECAUSE I

CAN NOT SEE. THIS SCREEN IS SO LIGHT THAT I CAN'T SEE IT, BUT I'VE GOT THE HARD COPIES RIGHT HERE. NOW I'D LIKE YOU TO -- NOW, SINCE THIS IS CONFIDENTIAL, DOCTOR, WE'RE NOT GOING TO READ VERBATIM FROM WHAT IT SAYS, WE'RE GOING TO REFER TO WHAT IT SAYS AS CLEARLY AS WE CAN WITHOUT READING VERBATIM FROM IT. SO I'D LIKE FOR YOU TO REVIEW THAT -- FIRST OF ALL, LET ME SAY, DOES THAT LOOK LIKE AN E-MAIL EXCHANGE THAT YOU RECOGNIZE?

A YES.

Q THAT'S BETWEEN YOU AND THE DR. A AT TULANE WE WERE REFERRING TO; CORRECT?

MS. DOUFEKIAS: YOUR HONOR, I'M SORRY, TO INTERRUPT. BUT THE VERSION THAT'S ON THE SCREEN IS NOT REDACTED PER THE CONFIDENTIALITY AGREEMENT.

THE COURT: LET'S TAKE IT DOWN THEN.

MR. DUNCAN: TAKE THAT DOWN.

THE COURT: I'M LOOKING AT THE HARD COPY MYSELF AND I THINK THE DOCTOR HAS A HARD COPY IN FRONT OF HIM.

MR. DUNCAN: OKAY, SO THESE WERE REDACTED AND WE'RE NOW PUTTING UP THE CORRECT REDACTED ONE.

MS. DOUFEKIAS: I THINK IF WE JUST OPERATED ON THE HARD COPIES, I THINK THAT IF THE WITNESS HAS A HARD COPY AND MR. DUNCAN HAS A HARD COPY, I THINK THAT WOULD BE FINE.

MR. DUNCAN: I DON'T MIND DOING IT THAT WAY, JUDGE. IT'S EASIER FOR ME TO LOOK AT THE HARD COPY.

THE COURT: LET'S DO IT THAT WAY THEN.

MR. DUNCAN: OKAY.

BY MR. DUNCAN:

Q SO REFERRING AGAIN TO JX 169, DOCTOR, YOU RECOGNIZE THAT E-MAIL?

A YES.

Q WHY DON'T YOU JUST TAKE A LOOK AT IT, READ IT THROUGH. NOW I JUST WANT TO ASK YOU A GENERAL QUESTION.

A OKAY.

Q DOES THIS E-MAIL REFLECT THE BEGINNING OF A CONVERSATION, E-MAIL CONVERSATION, THAT YOU HAD WITH TULANE MEDICAL CENTER OVER SEVERAL MONTHS REGARDING YOUR SEEKING ADMITTING PRIVILEGES?

A CORRECT.

Q AND THAT EXCHANGE OF COMMUNICATIONS WAS INITIATED BY YOU IN ORDER TO OBTAIN ADMITTING PRIVILEGES AND COMPLY WITH HB 388; RIGHT?

A THAT WOULD BE ACCURATE.

Q I'D LIKE TO GO NOW TO JOINT EXHIBIT 175?

A EXCUSE ME, 175?

Q YES, SIR, 175. YOU FIND THAT ONE, DOCTOR?

A I'M WORKING ON IT.

Q OKAY.

A OKAY, I HAVE JOINT EXHIBIT 175.

Q GREAT. NOW, I'D LIKE FOR YOU TO LOOK AT THAT.

REVIEW THAT ONE, PLEASE. DOCTOR, IS THIS AN E-MAIL EXCHANGE SORT OF FURTHER DOWN IN THE LINE OF YOUR COMMUNICATIONS WITH THIS DOCTOR AT TULANE REGARDING YOUR SEEKING ADMITTING PRIVILEGES?

A YES.

Q OKAY. I'D JUST REFER YOU TO THE RESPONSE FROM DR. A TO YOU GIVEN ON AUGUST 18TH, 2014. THAT'S THE TOP E-MAIL ON THAT -- ON THAT EXHIBIT. DO YOU SEE THAT?

A YES.

Q NOW LET ME -- I'M NOT GOING TO READ VERBATIM FROM THE E-MAIL, BUT I WANT TO REFER TO IT. IS IT FAIR TO SAY THAT THIS E-MAIL DESCRIBES DR. A, THAT SHE'S WORKING ON AN APPROACH WHERE YOU GET ADMITTING PRIVILEGES FOR YOUR ABORTION PATIENTS, IN OTHER WORDS, WOMEN THAT HAVE, YOU KNOW, POSSIBLE COMPLICATIONS FROM ABORTION. AND UNDER THAT ARRANGEMENT YOU THEN CONSULT WITH THE DEPARTMENT FOR FURTHER CARE AND FURTHER -- LET ME JUST STOP THERE. IS THAT A FAIR CHARACTERIZATION?

MS. DOUFEKIAS: OBJECTION, YOUR HONOR. MR. DUNCAN WAS OBJECTING TO THESE DOCUMENTS BECAUSE THEY'RE HEARSAY. SO IF THEY'RE HEARSAY FOR ME, THEY'RE HEARSAY FOR HIM.

THE COURT: WE'RE TALKING ABOUT THE E-MAIL; WHAT'S IN THE E-MAIL?

MR. DUNCAN: NO, I -- I'M SORRY.

MS. DOUFEKIAS: YES, YOUR HONOR.

MR. DUNCAN: I DID NOT OBJECT TO ANY OF THESE DOCUMENTS AS HEARSAY. WHAT I OBJECTED TO WAS REFERENCE TO COMMUNICATIONS THAT ARE NOT CONTAINED IN ANY EXHIBIT THAT WE HAVE HERE.

THE COURT: NUMBER ONE, THESE ARE JOINT EXHIBITS. THEY'RE ADMITTED. THEY'RE IN EVIDENCE, SO I'LL OVERRULE THE OBJECTION.

MR. DUNCAN: THANK YOU.

BY MR. DUNCAN:

Q DOCTOR, DID YOU UNDERSTAND MY QUESTION OR WOULD YOU LIKE ME TO REPHRASE IT?

A COULD YOU REPEAT IT PLEASE OR REPHRASE IT?

Q SURE. DOES THIS E-MAIL INDICATE THAT THE DOCTOR AT TULANE WHO YOU'RE E-MAILING IS WORKING ON AN APPROACH WHERE YOU CAN GET ADMITTING PRIVILEGES FOR YOUR ABORTION PATIENTS AND THEN YOU WOULD CONSULT WITH THE DEPARTMENT AT TULANE FOR THE CARE OF THOSE PATIENTS?

A I THINK THAT'S ACCURATE, YES.

Q THANK YOU. AND IT ALSO SAYS, YOU KNOW, AND AGAIN, I'M JUST CHARACTERIZING THE DOCUMENT WITHOUT READING IT VERBATIM. IT ALSO SAYS THAT YOU'D HAVE TO SHOW TULANE THAT YOU KNOW HOW TO DIAGNOSE AND INITIALLY MANAGE ABORTION COMPLICATIONS; CORRECT?

A CORRECT.

Q OKAY. THANK YOU. LET'S GO TO JX 183. I THINK

YOU'VE ALREADY LOOKED AT THIS DOCUMENT, SO TURN TO THAT ONE. THAT'S THE ACTUAL LETTER AND THE DELINEATION FROM TULANE. 183. ARE YOU THERE, DOCTOR?

A I'M WORKING ON IT.

Q OKAY. SORRY. I'VE HAD A LOT OF COFFEE THIS MORNING, AS WE'VE ESTABLISHED.

A I'M NOT AS FAST AS YOU YOUNGSTERS, BUT I'M GETTING THERE.

Q THANK YOU, DOCTOR.

A OKAY. I HAVE EXHIBIT 183.

Q NOW, IF YOU LOOK AT THAT EXHIBIT IT LOOKS LIKE ONE PAGE OF IT IS A LETTER FROM TULANE AND THEN THE NEXT PAGE OF IT IS CALLED DELINEATION OF PRIVILEGES; DO YOU SEE THAT?

A CORRECT.

Q I WANT YOU TO LOOK AT THE DELINEATION OF PRIVILEGES PAGE AND ASK YOU A COUPLE OF QUESTIONS ABOUT THAT. NOW THIS DOCUMENT IS CONFIDENTIAL SO I'M NOT GOING TO READ VERBATIM FROM IT, BUT I AM GOING TO CHARACTERIZE IT FOR YOU. DOES THIS REFLECT THAT YOU HAVE BEEN GIVEN THE STATUS OF COURTESY MEDICAL STAFF AT TULANE?

A YES.

Q AND DOES THIS INDICATE THAT YOU HAVE PRIVILEGES FOR OBSTETRICS AND GYNECOLOGY AT TULANE?

A NO.

Q OKAY. WELL, DOCTOR, I'M JUST GOING TO -- AGAIN, I

CAN'T READ VERBATIM FROM THE DOCUMENT, BUT I'D JUST LIKE YOU TO LOOK AT THE PART OF THE DOCUMENT THAT SAYS -- THAT REFLECTS WHAT THE PRIVILEGES ARE FOR AND DOES IT REFLECT THAT THEY'RE FOR OBSTETRICS AND GYNECOLOGY?

A I DON'T UNDERSTAND THE QUESTION. MY -- THE CONDITION ON THIS LIMITS ME AND IT'S MY UNDERSTANDING THAT CONDITION LIMITS ME TO WHAT I CAN DO.

Q I UNDERSTAND THAT, DOCTOR. I'M NOT ASKING ABOUT THE LIMITATION ON THE PRIVILEGES. I'M JUST ASKING ABOUT THE GENERAL CATEGORY OF PRIVILEGES THAT ARE REFLECTED ON THE DOCUMENT. DOES IT NOT -- IS IT NOT THE CASE THAT THE GENERAL CATEGORY OF PRIVILEGES REFLECTED ON THE DOCUMENT THAT YOU'VE BEEN GRANTED AS A MEMBER OF THE COURTESY STAFF FOR OBSTETRICS AND GYNECOLOGY?

A YES.

Q THANK YOU. NOW, YOU'LL SEE A COLUMN THERE, AGAIN, I'M NOT GOING TO READ VERBATIM FOR IT -- FROM IT, BUT THE COLUMN SAYS PRIVILEGE. RIGHT? DO YOU SEE THAT COLUMN?

A YES.

Q OKAY. AND THERE'S A NUMBER OF -- THERE'S THREE PARAGRAPHS UNDER THAT COLUMN, WRITTEN IN VERY SMALL PRINT. DO YOU SEE THAT?

A YES.

Q OKAY. LET ME ASK YOU THIS, DOES THIS DOCUMENT REFLECT THAT CORE PRIVILEGES IN OBSTETRICS CAN INCLUDE THE

ABILITY TO ADMIT A PATIENT?

A YES.

Q AND DOES IT REFLECT THAT CORE PRIVILEGES IN OBSTETRICS INCLUDE THE ABILITY TO DIAGNOSE A PATIENT?

A YES.

Q AND DOES IT REFLECT THAT CORE PRIVILEGES IN OBSTETRICS CAN INCLUDE THE ABILITY TO PROVIDE MEDICAL AND SURGICAL CARE FOR A PATIENT?

A YES.

Q THANK YOU.

A BUT I DON'T DO OBSTETRICS.

Q YES, THANK YOU, DOCTOR. I'LL ASK YOU ABOUT THE LIMITATION NOW.

A OKAY.

Q SO YOU SEE WAY OVER ON THE RIGHT, THERE'S A CONDITION ON THE PRIVILEGES?

A CORRECT.

Q SO IT DOES REFLECT THAT THE PRIVILEGES ARE LIMITED TO SOMETHING; IS THAT RIGHT?

A CORRECT.

Q RIGHT. NOW IF YOU READ THAT, I KNOW WE CAN'T READ IT VERBATIM, THE COURT CAN AND COUNSEL CAN.

THE COURT: AND THE COURT IS.

MR. DUNCAN: AND THE COURT IS READING IT, GOOD.

BY MR. DUNCAN:

Q DOCTOR, DOES THIS CONDITION, IS IT FAIR TO SAY FROM WHAT IS SAID ON THAT PAGE, THAT THIS CONDITION ALLOWS YOU TO ADMIT PATIENTS WITH REFERRAL OF THOSE PATIENTS TO AN ATTENDING PHYSICIAN AT TULANE?

A CORRECT.

Q OKAY, THAT'S GREAT. THANK YOU. I'M JUST GOING TO ASK YOU A COUPLE MORE QUESTIONS ABOUT THIS. I KNOW IT'S HARD TO GO THROUGH THESE DOCUMENTS. LET'S LOOK -- LET'S GO BACK TWO AND GO TO JX 181. THAT'S TWO BACK FROM 183.

A I WOULD HOPE SO.

Q WE'VE ESTABLISHED THAT. VERY GOOD. ALL RIGHT. DO YOU SEE THAT, 181?

A YES, I HAVE 181.

Q GREAT. NOW, THAT'S -- WOULD YOU LOOK AT THAT E-MAIL? YOU RECOGNIZE THAT?

A YES.

Q THAT'S FURTHER PART OF YOUR COMMUNICATIONS WITH THIS DOCTOR AT TULANE, DR. A, REGARDING YOUR SEEKING ADMITTING PRIVILEGES; CORRECT?

A CORRECT.

Q NOW THIS ONE IS DATED FEBRUARY 23RD, 2015; IS IT NOT?

A YES.

Q THAT IS -- IN FACT, THAT'S RIGHT AROUND THE TIME THAT YOU WERE ACTUALLY GRANTED THE PRIVILEGES AT TULANE, ISN'T

IT?

A YES.

Q OKAY. NOW, IF YOU LOOK AT THIS E-MAIL, I THINK WHAT YOU'LL SEE THERE -- I'LL JUST ASK YOU. DO YOU SEE THERE THE SAME LANGUAGE FROM YOUR DELINEATION OF PRIVILEGES THAT REFLECTS THE LIMITATION ON THE PRIVILEGES?

A YES.

Q IN FACT, IT'S QUOTED. WE WON'T READ IT VERBATIM, BUT IT'S QUOTED THERE. NOW, I WANT YOU TO LOOK AT THE SENTENCE RIGHT UNDER THAT. I WANT YOU TO READ THAT SENTENCE.

A YOU WANT ME TO READ --

Q NO, I'M SORRY. DON'T READ IT OUT LOUD, JUST READ IT TO YOURSELF.

A YOU'RE TALKING ABOUT THE SENTENCE UNDER WHAT?

Q UNDER WHERE -- THE E-MAIL IS QUOTING THE LIMITATION ON YOUR PRIVILEGES FROM THE DELINEATION AND THEN RIGHT UNDER IT -- LET ME JUST ASK YOU. RIGHT UNDER IT, IS THERE A SENTENCE THAT EXPLAINS FURTHER WHAT THOSE PRIVILEGES MEAN?

A YES.

Q NOW, DOES THAT -- YOUR UNDERSTANDING OF THAT SENTENCE, IS IT FAIR TO SAY THAT WHAT TULANE -- WHAT THE DOCTOR AT TULANE IS SAYING IS BASICALLY YOU HAVE ADMITTING PRIVILEGES, BUT YOU HAVE TO CONSULT WITH US RIGHT AWAY?

A MY UNDERSTANDING IS THAT I HAVE -- MY NAME WILL BE AS THE ADMITTING PHYSICIAN, BUT THE CARE OF THE PATIENT IS

TURNED OVER TO THEM IMMEDIATELY. THAT'S MY UNDERSTANDING, YES.

Q I UNDERSTAND THAT'S YOUR UNDERSTANDING, DOCTOR. BUT I'M ASKING ABOUT THIS PARTICULAR COMMUNICATION WITH TULANE. OKAY, NOW YOU'VE READ THAT SENTENCE, RIGHT? I CAN'T QUOTE IT VERBATIM.

MS. DOUFEKIAS: OBJECTION, YOUR HONOR. COUNSEL IS ASKING FOR THE WITNESS' UNDERSTANDING OF HIS PRIVILEGES BASED ON THIS DOCUMENT AND THE WITNESS IS ANSWERING WITH HIS UNDERSTANDING AND COUNSEL KEEPS ASKING THE QUESTION ABOUT HIS UNDERSTANDING. IT'S ASKED AND ANSWERED.

MR. DUNCAN: YOUR HONOR, OF COURSE THE REASON THAT I'M DOING -- I DON'T WANT TO DO THAT, YOUR HONOR. BUT THE REASON I'M DOING THAT IS BECAUSE I CAN'T READ THE THING TO HIM.

THE COURT: I UNDERSTAND. I UNDERSTAND. AND I AM READING IT AND I'M LOOKING AT THE LANGUAGE AND UNDERSTAND THE ISSUES, SO...

MR. DUNCAN: FINE. YOU'RE HONOR IS READING IT.

BY MR. DUNCAN:

Q SO, DOCTOR, IS YOUR ANSWER THAT YOUR UNDERSTANDING OF THIS COMMUNICATION IS NOT THAT YOU HAVE ADMITTING PRIVILEGES, BUT HAVE TO CONSULT WITH TULANE RIGHT AWAY?

A MY UNDERSTANDING IS THAT I WOULD BE THE ADMITTING PHYSICIAN OF RECORD, BUT THEY WILL BE THE TREATING PHYSICIANS.

Q OKAY. IS YOUR UNDERSTANDING OF THIS SENTENCE, THAT TULANE HAS NAMED A DOCTOR THAT HAS AGREED TO BE YOUR PRIMARY CONSULTANT?

A YES.

Q ONE MORE E-MAIL, DOCTOR. JX -- JOINT EXHIBIT 184. DO YOU SEE THAT ONE, DOCTOR?

A I JUST GOT THERE.

Q OKAY. THANK YOU. SO LOOK AT THAT. DO YOU RECOGNIZE THAT E-MAIL EXCHANGE?

A YES.

Q OKAY. THIS E-MAIL EXCHANGE IS ALSO FROM DR. A AT TULANE TO YOU REGARDING THE ADMITTING PRIVILEGES THAT HAVE BEEN GRANTED; CORRECT?

A CORRECT.

Q AND THIS ONE IS DATED MARCH 5TH, 2015; IS IT NOT?

A YES.

Q OKAY. AND THAT'S, JUST TO BE CLEAR, THAT'S MAYBE ALMOST TWO WEEKS, MAYBE TEN DAYS OR SO AFTER THE PRIVILEGES WERE ACTUALLY GRANTED; RIGHT?

A YES.

Q OKAY. NOW, IS IT FAIR TO SAY THAT THIS E-MAIL EXCHANGE IS TO FURTHER EXPLAIN THE NATURE OF YOUR PRIVILEGES GRANTED AT TULANE?

A YES.

Q EVEN AFTER YOU RECEIVED THE DELINEATION IN THE

LETTER; CORRECT?

A CORRECT.

Q YOU SOUGHT FURTHER CLARIFICATION FROM TULANE VIA THIS E-MAIL EXCHANGE; CORRECT?

A CONFIRMATION. YES. YES.

Q THANK YOU. AND READING THIS E-MAIL RESPONSE FROM DR. A, DO YOU SEE THAT? THAT'S THE FIRST E-MAIL THERE? IT'S REALLY JUST THREE SENTENCES, WHICH I WON'T READ VERBATIM. BUT IS IT FAIR TO SAY THAT THIS E-MAIL REFLECTS THAT YOU WILL BE THE ADMITTING PHYSICIAN AND THAT TULANE WILL BE THE CONSULTING PHYSICIAN AND IT NAMES A DOCTOR?

A YES.

Q OKAY. IS THAT THE FINAL COMMUNICATION YOU HAVE RECEIVED FROM TULANE REGARDING THE PRIVILEGES GRANTED TO YOU ON FEBRUARY 24TH?

A I BELIEVE SO.

Q OKAY. NOW, LET ME ASK YOU, YOU WERE ASKED -- STRIKE THAT. YOU WERE ASKED SOME QUESTIONS ABOUT A DECLARATION THAT SECRETARY KLIEBERT HAS FILED IN THIS LITIGATION, WEREN'T YOU?

A YES.

Q LET'S MAKE SURE WE'RE ALL LOOKING AT THE DECLARATION. FIRST OF ALL ME. THAT -- TO REFRESH YOUR MEMORY, DOCTOR, THAT WAS DEFENDANT'S EXHIBIT 157. 157. DO YOU HAVE THAT IN FRONT OF YOU, DOCTOR? WE ACTUALLY HAD THAT UP ON THE SCREEN EARLIER, DIDN'T WE?

A 157?

Q 157, RIGHT. I JUST WANT TO MAKE SURE YOU WERE LOOKING AT IT.

A I'M WORKING ON IT.

Q OKAY.

A YOU DID SAY ONE, FIVE, SEVEN?

Q RIGHT; ONE, FIVE, SEVEN. THE CONFUSION MAY BE THAT'S DEFENDANT'S EXHIBIT 157. EARLIER I BELIEVE YOU WERE LOOKING AT IT, MS. DOUFEKIAS WAS REFERRING TO A PARTICULAR PARAGRAPH ON THAT DOCUMENT.

A IT'S ON THE COMPUTER SCREEN.

Q OKAY. YOU CAN SEE THAT OKAY?

A WELL, IT'S NOT ON THERE NOW. IT DROPPED OFF.

Q OKAY. IT'S BACK UP.

A YES, I SEE DECLARATION OF SECRETARY KATHY KLIEBERT?

Q YES. LET ME JUST ASK YOU A COUPLE OF QUESTIONS. DO YOU KNOW WHO SECRETARY KLIEBERT IS? DO YOU KNOW OFFICIALLY WHO SHE IS?

A YES.

Q AND SHE IS THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HOSPITALS; IS SHE NOT?

A YES.

Q AND YOU KNOW THAT SHE'S THE DEFENDANT IN THIS LITIGATION?

A YES.

Q SO, NOT TO BE -- NOT TO BE UGLY ABOUT IT, BUT YOU SUED HER, DIDN'T YOU?

A YES.

Q AND YOU SUED HER, DID YOU NOT, BECAUSE SHE'S IN CHARGE OF ENFORCING HB 388?

A YES.

Q LET'S LOOK AT PARAGRAPH 6. I BELIEVE MS. DOUFEKIAS WAS ASKING YOU SOME QUESTIONS ABOUT PARAGRAPH 6. WELL, I'M SORRY, DOCTOR, JUST ONE FOLLOW-UP ON WHAT I JUST ASKED YOU. ARE YOU AWARE OF ANYONE ELSE IN THE STATE OF LOUISIANA WHO ENFORCES HB 388?

A I'M SORRY, COULD YOU REPEAT THAT?

Q ARE YOU AWARE OF ANY OTHER OFFICIAL IN THE STATE OF LOUISIANA WHO ENFORCES HB 388?

A NO, I'M NOT.

Q ARE YOU AWARE OF ANY OTHER OFFICIAL IN THE STATE OF LOUISIANA THAT ENFORCES ABORTION REGULATIONS?

A OUTSIDE OF THE DEPARTMENT OF HEALTH AND HOSPITALS?

Q CORRECT.

A NO, I'M NOT.

Q NOW, LET'S LOOK AT PARAGRAPH 6 AGAIN. THIS IS SECRETARY KLIEBERT'S DECLARATION ABOUT YOUR PRIVILEGES AT TULANE. DO YOU SEE THAT PARAGRAPH?

A YES, I'M READING IT AS WE SPEAK.

Q WONDERFUL. NOW, SINCE THIS ONE IS NOT A

CONFIDENTIAL DOCUMENT WE CAN READ ALONG TOGETHER, SO LET'S DO THAT. SECRETARY KLIEBERT SAYS, "HAVING REVIEWED THE DOCUMENTS REFERRED TO ABOVE IN PARAGRAPH 4" -- AND IF YOU'LL LOOK AT PARAGRAPH 4 YOU'LL SEE THAT THE DOCUMENT SHE'S REFERRING TO ARE THESE COMMUNICATIONS AND LETTERS FROM TULANE THAT WE'VE BEEN TALKING ABOUT.

A RIGHT.

Q SHE SAYS, "I HAVE DETERMINED THAT THE ADMITTING PRIVILEGES GRANTED TO DR. JOHN DOE 2 ARE SUFFICIENT TO COMPLY WITH THE ACT." MORE SPECIFICALLY, SHE GOES ON TO SAY, "A, THE HOSPITAL THAT HAS GRANTED DR. JOHN DOE 2 PRIVILEGES IS ONE THAT PROVIDES OBSTETRICAL AND GYNECOLOGICAL HEALTH SERVICES AND IS LICENSED BY THE DEPARTMENT." ALL RIGHT, DO YOU SEE THAT?

A YES.

Q DO YOU AGREE WITH THAT? AS FAR AS YOU KNOW DO YOU AGREE WITH THAT STATEMENT?

A YES.

Q AND THEN, B, IT SAYS, "THAT HOSPITAL HAS APPOINTED DR. JOHN DOE 2 A MEMBER IN GOOD STANDING OF IT'S COURTESY MEDICAL STAFF. DO YOU HAVE ANY REASON NOT TO AGREE WITH THAT?

A NO.

Q C, SHE SAYS, THE HOSPITAL'S GOVERNING BYLAWS PROVIDE THAT MEMBERS OF THE COURTESY MEDICAL STAFF HAVE THE ABILITY TO ADMIT PATIENTS. DO YOU HAVE ANY REASON TO DISAGREE WITH THAT?

A NO.

Q D, THE CLINICAL PRIVILEGES GRANTED ALLOW DR. JOHN DOE TWO TO ADMIT HIS ABORTION PATIENTS TO A HOSPITAL WHERE DIAGNOSTIC AND SURGICAL CARE CAN BE PROVIDED TO SUCH PATIENTS. DO YOU AGREE WITH THAT STATEMENT?

A NO.

Q AND E, THE HOSPITAL IS WITHIN 30 MILES OF THE LOCATION WHERE DR. JOHN DOE TWO PROVIDES OUTPATIENT ABORTION SERVICES IN THE NEW ORLEANS AREA. DO YOU AGREE WITH THAT STATEMENT?

A NO.

Q THANK YOU. NOW WHEN MS. DOUFEKIAS WAS ASKING YOU QUESTIONS YOU EXPRESSED CONCERNS ABOUT PARAGRAPH SIX. DO YOU REMEMBER THAT?

A YES.

Q AND IS IT FAIR TO SAY THAT YOUR CONCERNS ARE THAT SECRETARY KLIEBERT MADE, OR SOME OTHER SECRETARY IN THE FUTURE MAY CHANGE THEIR VIEW OF WHAT ACT 620 REQUIRES. DIDN'T YOU TESTIFY TO THAT?

A YES.

Q DO YOU HAVE ANY REASON TO BELIEVE THAT SECRETARY KLIEBERT WILL SOMEHOW CHANGE HER VIEW OF YOUR PRIVILEGES AT TULANE?

A I WAS GOING BY MY READING OF HOUSE BILL 388.

Q I UNDERSTAND, DOCTOR. WHO'S RESPONSIBLE FOR

ENFORCING HOW BILL 388 BY LAW IN LOUISIANA?

MS. DOUFEKIAS: OBJECTION, YOUR HONOR. HE'S NOT A LAWYER.

THE COURT: HE CAN ANSWER IF HE KNOWS.

BY MR. DUNCAN:

Q IF YOU KNOW?

A I'M SORRY.

Q WHO'S RESPONSIBLE FOR ENFORCING HB 388 IN LOUISIANA; WHAT DEPARTMENT?

A DEPARTMENT OF HEALTH AND HOSPITALS.

Q AND SECRETARY KLIEBERT IS THE HEAD OF THAT DEPARTMENT, IS SHE NOT?

A I ASSUME FOR NOW, YES.

Q WOULDN'T IT BE FAIR TO SAY THAT SHE HAS THE AUTHORITY TO INTERPRET AND APPLY HB 388 TO PARTICULAR SITUATIONS?

A WHILE SHE'S THE HEAD IF THE DHH, YES.

Q SO THE ANSWER IS YES?

A YES.

Q AND YOU UNDERSTAND THAT SHE'S FILED THIS DECLARATION IN THIS LITIGATION; CORRECT?

A CORRECT.

Q AND YOU SUED HER BECAUSE YOUR -- IS IT FAIR TO SAY YOU SUED HER BECAUSE YOU WERE CONCERNED THAT YOU WOULDN'T BE ABLE TO COMPLY WITH 388 AND BE UNABLE TO CONTINUE TO PROVIDE

ABORTION SERVICES?

A I'M SORRY, CAN YOU REPEAT THAT?

Q SURE.

A I DON'T UNDERSTAND EXACTLY WHAT YOU'RE SAYING.

Q IS IT FAIR TO SAY THAT YOU SUED SECRETARY KLIEBERT BECAUSE YOU WERE CONCERNED THAT HB 388 WOULD PREVENT YOU FROM GAINING ADMITTING PRIVILEGES AND CONTINUING TO APPLY ABORTION SERVICES?

MS. DOUFEKIAS: OBJECTION, YOUR HONOR. THE QUESTION MAY SOLICIT PRIVILEGED INFORMATION.

THE COURT: WE CAN DO ONE OF TWO THINGS. EITHER PUT THE HEAD PHONES ON OR YOU COULD REPHRASE THE QUESTION.

MR. DUNCAN: I'LL TRY TO REPHRASE THE QUESTION.

BY MR. DUNCAN:

Q YOU WERE AWARE THAT A COMPLAINT WAS FILED IN THIS CASE ON YOUR BEHALF, CORRECT, DOCTOR?

A CORRECT.

Q AND THAT COMPLAINT CHALLENGED HB 388, DID IT NOT?

A YES.

Q CHALLENGED IT AS VIOLATING THE CONSTITUTION, CORRECT?

A CORRECT.

Q AND ARE YOU AWARE THAT THE PURPOSE OF FILING THE COMPLAINT WAS TO OVERTURN HB 388?

A YES.

Q AND YOU WERE AWARE OF THE COMPLAINT; CORRECT?

A YES.

Q AND IS IT FAIR TO SAY THAT YOUR REASON FOR JOINING IN THE COMPLAINT WAS BECAUSE YOU WERE CONCERNED THAT HB 388 WOULD PREVENT YOU FROM OBTAINING ADMITTING PRIVILEGES AND BEING ABLE TO CONTINUE TO PROVIDE ABORTION SERVICES IN NEW ORLEANS?

A YES.

Q OKAY. ALL RIGHT, NO FURTHER QUESTIONS ABOUT THAT DECLARATION. LET'S MOVE ON. I DON'T THINK I HAVE ANYTHING ELSE ON IT. SORRY, LET ME JUST GET THESE PAPERS OUT OF THE WAY.

DOCTOR, LET'S RETURN TO TALKING ABOUT YOUR PRIVILEGES APPLICATION TO WILLIS-KNIGHTON IN BOSSIER CITY. YOU TESTIFIED EARLIER THAT YOU APPLIED TO WILLIS-KNIGHTON WITH RESPECT TO YOUR ABORTION PRACTICE AT BOSSIER CITY MEDICAL SUITE; CORRECT?

A CORRECT.

Q NOW YOU WERE ASKED SOME QUESTIONS ABOUT YOUR COMMUNICATIONS WITH WILLIS-KNIGHTON, WERE YOU NOT? BY MS. DOUFEKIAS? DO YOU RECALL BEING ASKED QUESTIONS ABOUT YOUR COMMUNICATIONS WITH WILLIS-KNIGHTON REGARDING YOUR APPLICATION?

A YES.

Q OKAY. LET'S REFER TO JX 90. DOCTOR, THAT'S

Tab I

Declaration of Secretary Kathy Kliebert (JX191)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC et al., *Plaintiffs,* v. KATHY KLIEBERT, *Defendant*	No. 14-cv-525-JWD-RLB

DECLARATION OF SECRETARY KATHY KLIEBERT

Pursuant to 28 U.S.C. § 1746, the undersigned declares as follows:

1. My name is Kathy Kliebert. I make this declaration in my official capacity as the Secretary of the Louisiana Department of Health and Hospitals ("the Department").

2. Among my other responsibilities, I am responsible by law for enforcing Act 620, which requires providers of outpatient abortion services in Louisiana to have hospital admitting privileges. *See* Act 620, 2014 Reg. Sess. (La. 2014), to be codified at LA. REV. STAT. § 40:1299.35.2(A)(2)(a) ("the Act"). The Act provides that a physician performing an abortion at an outpatient abortion facility in Louisiana "[s]hall ... [h]ave 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." Act 620, § 1 (amending LA. REV. STAT. § 40:1299.35.2(A)(2)). The Act defines "active admitting privileges" to mean that "the physician is a member in good standing of the medical staff of a hospital licensed by the department, with the ability to admit a patient

Joint Exhibit 191

and to provide diagnostic and surgical services to such patient consistent with the requirements of Paragraph (A)(1) of this subsection." *Id.*[1]

3. I am aware that the plaintiffs in this matter include physicians (referred to as Drs. John Doe #1 and #2) who provide abortion services at outpatient clinics in Louisiana. I am also aware that these physicians have applied for admitting privileges in order to comply with the Act and that some of their applications remain pending. Finally, I am aware that the temporary restraining order entered by the Court provides that the Department shall not enforce the Act against outpatient abortion providers in Louisiana until the trial in this matter has been completed and the Court has ruled on the plaintiffs' claims. The Department has fully complied with the Court's temporary restraining order at all times since it was issued, and will continue to do so as long as the order is in force.

4. I am aware that, over the past week, plaintiffs have produced documents relevant to admitting privileges granted on February 24, 2015 to Dr. John Doe #2 by a hospital in the New Orleans area. These documents include the hospital's letter appointing Dr. John Doe #2 to the hospital's courtesy medical staff, the hospital's delineation of the clinical privileges granted to Dr. John Doe #2, and communications between the hospital and Dr. John Doe #2 clarifying the nature of those privileges.[2]

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[1] The referenced paragraph (A)(1) provides that a physician in Louisiana may perform or induce an abortion if the physician is "licensed to practice medicine in the State of Louisiana and is currently enrolled in or has completed a residency in obstetrics and gynecology or family medicine." Act 620, § 1 (referencing LA. REV. STAT. § 40:1299.35.2(A)(1)).

[2] These documents have been marked confidential pursuant to the agreed protective

5. I am aware that an issue in this litigation is whether outpatient abortion providers in Louisiana can obtain hospital admitting privileges and thereby comply with the Act. Consequently, pursuant to my authority as Secretary of the Department and in order to assist the Court in this litigation, I have undertaken to determine whether the privileges recently granted to Dr. John Doe #2 are sufficient to comply with the Act. I am able to make this determination by reference to the documents produced by the plaintiffs in the past week.

6. Having reviewed the documents referred to above in paragraph 4, I have determined that the admitting privileges granted to Dr. John Doe #2 are sufficient to comply with the Act. More specifically: (a) the hospital that has granted Dr. John Doe #2 privileges is one that provides obstetrical or gynecological health services and is licensed by the Department; (b) that hospital has appointed Dr. John Doe #2 a member in good standing of its courtesy medical staff; (c) the hospital's governing bylaws provide that members of the courtesy medical staff have the ability to admit patients; (d) the clinical privileges granted allow Dr. John Doe #2 to admit his abortion patients to a hospital where diagnostic and surgical care can be provided to such patients; and (e) the hospital is within 30 miles of the location where Dr. John Doe #2 provides outpatient abortion services in the New Orleans area.

7. Additionally, I am aware that the plaintiffs have now produced documents relevant to admitting privileges granted to Dr. John Doe #5 on July 30, 2014 by a

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order in this litigation. They appear as Joint Exhibits 169-184. This declaration does not refer to any confidential information contained in those documents, and also does not divulge the name of the hospital.

hospital in the New Orleans area.[3] These documents—which were produced yesterday, on June 18, 2015—include the hospital's letter appointing Dr. John Doe #5 to the courtesy medical staff at the hospital, and the hospital's delineation of the clinical privileges granted Dr. John Doe #5.[4] Pursuant to my authority as Secretary of the Department and in order to assist the Court in this litigation, I have undertaken to determine whether the privileges granted to Dr. John Doe #5 are sufficient to comply with the Act. I am able to make this determination by reference to the documents produced by the plaintiffs yesterday.

8. Having reviewed the documents referred to above in paragraph 7, I have determined that the admitting privileges granted to Dr. John Doe #5 are sufficient to comply with the Act. More specifically: (a) the hospital that has granted Dr. John Doe #5 privileges is one that provides obstetrical or gynecological health services and is licensed by the Department; (b) that hospital has appointed Dr. John Doe #5 a member in good standing of its courtesy medical staff; (c) the hospital's governing bylaws provide that members of the courtesy medical staff have the ability to admit patients; (d) the clinical privileges granted allow Dr. John Doe #5 to admit his abortion patients to a hospital where diagnostic and surgical care can be provided to such patients; and (e) the hospital is within 30 miles of the location where Dr. John

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[3] I am aware that the physician referred to in this litigation as Dr. John Doe #5 is a physician who provides outpatient abortion services in the New Orleans and Baton Rouge areas. I am also aware that Dr. John Doe #5 was previously a plaintiff in this litigation before voluntarily dismissing his claims.

[4] These documents have been marked confidential pursuant to the agreed protective order in this litigation. This declaration does not refer to any confidential information contained in those documents, and also does not divulge the name of the hospital.

Doe #5 provides outpatient abortion services in the New Orleans area.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Kathy Kliebert
Secretary, Louisiana Department of Health and Hospitals

Executed on June 19, 2015

Tab J

Testimony of Dr. Robert Marier (Doc. 193) (excerpts)

A THAT'S CORRECT.

Q NOW, DOCTOR, YOU WERE ALSO ASKED A SERIES OF HYPOTHETICALS, AND ONE LENGTHY HYPOTHETICAL IN PARTICULAR, ABOUT A SCENARIO WITH A DOCTOR APPLYING FOR PRIVILEGES. THE QUESTION I HAD ABOUT THAT HYPOTHETICAL FOR YOU IS, IS THERE ANY REASON THAT THE DOCTOR IN THAT LONG HYPOTHETICAL COULD NOT SECURE ADMITTING PRIVILEGES TO SATISFY THE ACT DESPITE HAVING AN EXCLUSIVELY OUTPATIENT ABORTION PRACTICE?

A NO. HE COULD -- HE COULD MEET THE REQUIREMENTS. HE COULD GET PRIVILEGES IF IT WAS HIS INTENT TO PROVIDE IN-PATIENT CARE IF NEEDED.

Q OKAY. LET ME GIVE YOU A NEW HYPOTHETICAL THAT'S SLIGHTLY DIFFERENT FROM THE ONE THAT COUNSEL PRESENTED YOU. A PHYSICIAN IS GRANTED MEMBERSHIP ON THE COURTESY MEDICAL STAFF OF A LOCAL HOSPITAL. THE PHYSICIAN IS GRANTED CORE OB/GYN PRIVILEGES WHICH INCLUDE THE ABILITY TO ADMIT, DIAGNOSE, AND PROVIDE SURGICAL CARE. THE HOSPITAL, HOWEVER, LIMITS HIS PRIVILEGES IN THE SENSE THAT UPON ADMITTING THE PATIENT HE MUST CONSULT WITH ANOTHER DOCTOR AT THAT HOSPITAL. IN OTHER WORDS, THE PHYSICIAN WOULD BE THE ADMITTING PHYSICIAN AND THE OTHER DOCTOR WOULD BE THE CONSULTING PHYSICIAN. DOES THAT SCENARIO SATISFY THE REQUIREMENTS OF ACT 620?

A YES, IT DOES.

Q AND YOU TESTIFIED EARLIER THAT -- OR LET ME ASK YOU, IS THE REASON THAT IT WOULD -- THAT IT WOULD QUALIFY -- OR ONE

OF THE REASONS IT WOULD QUALIFY UNDER THE ACT IS BECAUSE, I BELIEVE YOU TESTIFIED EARLIER, IT IS FAIRLY ROUTINE OR COMMON IN A HOSPITAL SETTING FOR A TEAM OF CARE PROVIDERS TO BE INVOLVED; IS THAT RIGHT?

A THAT'S RIGHT.

Q AND JUST AGAIN, BRIEFLY, WHAT DOES THAT MEAN IN YOUR EXPERIENCE?

A WELL, IT MEANS IF A PATIENT -- IT DEPENDS ON WHAT COMPLICATION THE PATIENT MIGHT HAVE AND IT MIGHT BE IF THERE WAS A PERFORATION, THE PATIENT HAD PERITONITIS, THEY MIGHT WANT TO CONSULT WITH A GENERAL SURGEON TO DO AN EXPLORATORY LAPAROTOMY. OR THEY MIGHT WANT TO CONSULT WITH AN INFECTIOUS DISEASE EXPERT OR AN INTERNIST TO CARE FOR SOME MEDICAL COMPLICATION.

CONSULTANTS ARE ROUTINELY BROUGHT IN TO CARE FOR PATIENTS WITH LIFE-THREATENING ILLNESS, PEOPLE WITH DIFFERENT EXPERTISES. SO THE ACT DOESN'T -- AS I SAID EARLIER, DOESN'T LIMIT THE PHYSICIAN -- IT DOESN'T REQUIRE THAT THE ABORTION PROVIDER PROVIDE ALL OF THE PATIENT -- ALL OF THE SERVICES THAT A PATIENT NEEDS IN THE HOSPITAL BUT JUST THAT HE HAD PRIVILEGES TO ADMIT A PATIENT AND TO PROVIDE SOME DIAGNOSTIC AND SURGICAL SERVICES, NOT NECESSARILY EVERYTHING THAT A PATIENT MIGHT REQUIRE.

Q SO IN YOUR VIEW, WAS ACT 620 DRAFTED IN SUCH A WAY THAT IT WOULD ALLOW FOR THAT KIND OF FLEXIBILITY?

A YEAH, THAT WAS THE INTENT, WAS TO CREATE A -- A STANDARD, A THRESHOLD, IF YOU WILL, BUT NOT TO LIMIT THE OPTIONS THAT A PHYSICIAN MIGHT HAVE WHEN CARING FOR A VERY SICK PATIENT.

Q DOCTOR, ARE YOU AWARE -- OR HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE DECLARATION OF SECRETARY KATHY KLIEBERT THAT'S BEEN FILED INTO THIS MATTER? IT WAS DATED JUNE 19TH, 2015.

A YES.

MR. JOHNSON: IF I CAN PULL THAT UP ON THE SCREEN; JOINT EXHIBIT 191.

MS. JAROSLAW: OBJECTION, YOUR HONOR. BEYOND THE SCOPE OF WHAT'S IN DR. MARIER'S EXPERT REPORT. HE'S BEING ASKED TO COMMENT ON ANOTHER WITNESSES' AFFIDAVIT.

THE COURT: SUSTAINED.

MR. JOHNSON: FAIR ENOUGH.

BY MR. JOHNSON:

Q LET ME NOT SHOW YOU THE DOCUMENT, BUT LET ME READ YOU A HYPOTHETICAL. IF A DOCTOR IN LOUISIANA WAS GRANTED PRIVILEGES AT A HOSPITAL THAT -- AND HIS BACKGROUND WAS OB/GYN, AND HE WAS A MEMBER IN GOOD STANDING OF THE COURTESY MEDICAL STAFF, GRANTED COURTESY PRIVILEGES, AND THE HOSPITAL'S GOVERNING BYLAWS PROVIDE THAT MEMBERS OF THE COURTESY MEDICAL STAFF HAVE THE ABILITY TO ADMIT PATIENTS AND THE CLINICAL PRIVILEGES GRANTED TO THIS DOCTOR TO ADMIT HIS ABORTION

PATIENTS TO A HOSPITAL WERE -- WERE ACKNOWLEDGED AND THE HOSPITAL WAS WITHIN 30 MILES OF THE LOCATION OF HIS ABORTION CLINIC, WOULD THAT -- UNDER THOSE CRITERIA, WOULD THAT MEET THE REQUIREMENTS OF ACT 620?

A WELL, IS THE -- IN THIS HYPOTHETICAL, IS THE PHYSICIAN GIVEN PRIVILEGES TO PROVIDE ANY MEDICAL SERVICES FOR THE PATIENT, ANY DIAGNOSTIC OR SURGICAL SERVICES?

Q YES, IN THIS HYPOTHETICAL HE WOULD BE.

A WELL, THEN, THAT WOULD MEET THE REQUIREMENTS OF THE ACT.

Q SO NOT -- JUST SO THAT WE'RE CLEAR ABOUT YOUR TESTIMONY, AND YOU'VE EXPLAINED IT A FEW TIMES. I WANT TO MAKE SURE WE HAVE THIS RIGHT. NOT EVERY SERVICE HAS TO BE PROVIDED BY A PHYSICIAN HIMSELF IN TERMS OF THE PROCEDURES AT THE HOSPITAL; RIGHT?

A CORRECT.

Q AND IT'S OFTEN THE CASE THAT DOCTORS -- OTHER DOCTORS MAY BE INVOLVED IN A PATIENT'S CARE BECAUSE OTHER PROBLEMS MIGHT BECOME INVOLVED. YOU GAVE THE EXAMPLE OF THE INFECTIOUS DISEASE SITUATION; RIGHT?

A RIGHT.

Q AND SO PROVIDING SERVICES IN CONJUNCTION WITH OTHER PHYSICIANS IS NOT INCONSISTENT WITH THE STATUTE, ACT 620, OR WITH COMMON PRACTICE?

A CORRECT.

Tab K

District Court's Denial of Stay Pending Appeal (Feb. 16, 2016)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, *ET AL.*,

Plaintiffs,

VERSUS

KATHY H. KLIEBERT, Secretary, Louisiana Department of Health and Hospitals,

Defendant.

CIVIL ACTION

No. 3:14-00525-JWD-RLB

RULING ON DEFENDANT'S MOTION FOR STAY PENDING APPEAL, FOR EXPEDITED CONSIDERATION, AND FOR TEMPORARY STAY

I. INTRODUCTION

Before the Court is the Defendant's Motion for Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay ("Motion for Stay"), (Doc. 229), as well as the Defendant's Memorandum in Support of Her Motion for Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay ("Supporting Memorandum"), (Doc. 229-1) (collectively, "Defendant's Motions"). These documents were filed by Doctor Rebekah Gee ("Gee," "Secretary," or "Defendant") in her official capacity as Secretary of the Louisiana Department of Health and Hospitals ("DHH"), who has replaced her predecessor, Ms. Kathy H.

Kliebert ("Kliebert").[1] To the request sought in the Motion for Stay and the points made in the Supporting Memorandum, Plaintiffs—June Medical Services LLC, d/b/a Hope Medical Group for Women ("Hope"); Bossier City Medical Suite ("Bossier"); Choice, Inc., of Texas, d/b/a Causeway Medical Clinic ("Causeway");[2] Doctor John Doe 1 ("Doe 1"); and Doctor John Doe 2 ("Doe 2"), (collectively, "Plaintiffs")—have responded with the Memorandum in Opposition to Defendant's Motion to Stay the Preliminary Injunction Pending Appeal ("Opposition"). (Doc. 232; *see also* Doc. 216 at 5, 9.)

So as to win her requested stay, Defendant bore the burden of proving four separate elements: (1) a strong showing that she will likely prevail on the merits, (2) proof that she will be irreparably harmed in a stay's absence, (3) the relative unlikelihood that other parties and persons interested in the proceeding would be substantially injured, and (4) that the public interest favors a stay's issue. Generally, a stay is an extraordinary remedy, and the burden to demonstrate that a stay is warranted is rather heavy, with the need to balance equities paramount. Having evaluated the arguments raised by Plaintiffs and Defendant (collectively, "Parties"), both at the telephonic conference held on February 10, 2016, and in their most recent filings, this Court concludes that Defendant has not shown she is likely to prevail. The Court's application of the undue burden test is amply supported by existing precedent and the weight of the evidence. Her other ground for reversal, that this Court must grant absolute deference to Defendant's statutory interpretation at odds with the plain and unambiguous wording of the statute, is

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[1] This recent change may induce some confusion. Whenever this Ruling refers to the actions of the Secretary prior to Gee's appointment on January 5, 2016, Kliebert was the "Secretary." This Ruling will distinguish between the two women whenever practical.

[2] The three clinics are suing on behalf of themselves and their patients, physicians, and staff. (*See, e.g.*, Doc. 14 at 1–2; *see also* Doc. 232 at 1.) By stipulation, the Ruling covers Doctor John Doe 4. (Doc. 224.)

likewise unlikely to succeed. With her showing on these two points insufficiently convincing, precedent compels the preservation of the status quo, "the last, peaceable, noncontested status of the parties," *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). The harm to all persons and parties will thereby be minimized, substantial injuries to many likely prevented, until a final legal determination regarding the proper application of a well-established constitutional right can definitively be made.

For these reasons, as more fully stated below, this Court DENIES the Defendant's Motion for Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay, (Doc. 232).

II. BACKGROUND[3]

A. RELEVANT FACTS

On January 26, 2016, this Court issued its Findings of Fact and Conclusions of Law ("Ruling"). (Doc. 216.) Briefly put, after reviewing the Parties' extensive evidentiary submissions and six days' worth of testimony, this Court preliminarily enjoined Defendant from enforcing Section A(2)(a) of Act Number 620 ("Act" or "Act 620"), which amended Louisiana Revised Statutes § 40:1299.35.2. (*Id.* at 5.) The Court did so upon finding Act 620 to violate "the substantive due process rights of Louisiana women to obtain an abortion, a right guaranteed by the Fourteenth Amendment of the United States Constitution as established in *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) . . ., and pursuant to the test first set forth in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674

[3] Only the facts relevant to the instant dispute are here recapped. An exhaustive summary appears in the Court's Findings of Fact and Conclusions of Law. (Doc. 216.)

(1992), and subsequently refined by the Fifth Circuit." (*Id.* at 8.) The Supreme Court's major cases total three: *Gonzales v. Carhart*, 550 U.S. 124, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007); *Casey*, 505 U.S. 833; and *Roe*, 410 U.S. 113. The key Fifth Circuit cases number at least five: *Whole Woman's Health v. Cole*, 790 F.3d 563 (5th Cir. 2015); *Whole Woman's Health v. Lakey*, 769 F.3d 285 (5th Cir. 2014); *Jackson Women's Health Org. v. Currier*, 760 F.3d 448 (5th Cir. 2014); *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583 (5th Cir. 2014) ("*Abbott II*"); and *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406 (5th Cir. 2013) ("*Abbott I*").

On February 10, 2016, upon Defendant's request, "[f]or the reasons stated" in the Ruling (Doc. 216), and pursuant to Federal Rule of Civil Procedure 58,[4] the Judgment ("Judgment") issued. (Doc. 227.) Its second paragraph preliminarily enjoined

> Defendant Kathy H. Kliebert and her successors, as well as any and all employees, agents, entities, or other persons acting in concert with her, . . . from enforcing LA. R.S. § 40:1299.35.2 *et seq.* against the following persons: Doctor John Doe 1; Doctor John Doe 2; June Medical Services, LLC, d/b/a Hope Medical Group for Women, and its physicians and staff; Bossier City Medical Suite, as well as its physicians and staff; Choice, Inc. of Texas, d/b/a Causeway Medical Clinic, and its physicians and staff, including Doctor John Doe 4; and any and all others encompassed by the Parties' stipulations.

(*Id.* at 1–2.)

On that same day, Defendant filed two separate documents. The first—Defendant's Notice of Appeal ("Notice")—simply gave the required notice that the Defendant has appealed the Judgment and the Ruling to the United States Court of Appeals for the Fifth Circuit. (Doc. 228.) The second was the Motion for Stay and the Supporting Memorandum, its requests three in

[4] Unless otherwise noted, any and all references to "Rules" or "Rule []" in this order are to the Federal Rules of Civil Procedure.

number: (1) "for a stay of the Court's judgment (Doc. 227) and ruling (Doc. 216)," pending their appeal; (2) "for expedited consideration" of the Motion for Stay; and (3) "for a temporary stay pending the Court's disposition" of the Motion for Stay and, if denied, "pending disposition of any stay motion filed in the court of appeals." (Doc. 229 at 1.) At the telephonic conference held on February 10, 2016, bearing in mind both Plaintiffs' explicit opposition as well as the expiration of the temporary restraining order—and thus any protection that it afforded any and all parties and persons—upon the Ruling's release, (Doc. 233 at 8–9), this Court denied Defendant's request for a temporary stay pending consideration of the Motion for Stay. (Doc. 231 at 1–2.) In addition, with Defendant's consent, this Court authorized Plaintiffs to more formally respond to the Motion for Stay and the Supporting Memorandum on or before February 12, 2016, (*Id.* at 2), effectively denying Defendant's second request for a ruling on its recent motions on or before that date, (Doc. 229 at 1).

Following the hearing, one issue, the subject of this order, remained: whether this Court should stay its own Ruling and Judgment. (*See, e.g.*, Doc. 229-1.)

B. PARTIES' ARGUMENTS

1. Defendant's Points

The Defendant correctly states the four factors which must be considered in determining whether a stay should issue —"(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies," *Abbott I*, 734 F.3d at 410 & n.10 (internal

quotation marks omitted)—and now maintains that all four favor her request. (Doc. 229-1 at 5–14.)

Initially, Defendant contends reversal of the Ruling and Judgment on "either of two grounds" is "likely." (*Id.* at 6.) First, as she has read the Ruling and this circuit's precedent, this "Court's 'large fraction' analysis departs from the Fifth Circuit's 'large fraction' analysis." (*Id.* at 6.) In making this conclusion, Defendant describes this Court's two alternative methods for calculating large fraction in the following terms. At first, the Court took the annual number of abortions provided in 2013 by the four Louisiana-based doctors who have yet to obtain the admitting privileges required by Act 620, divided by the total number of abortions provided in Louisiana in 2013 ("Method 1"). As an additional calculation, this Court then took the number of Louisiana women of reproductive age, minus the number of abortions performed in 2013 by non-privileged Louisiana doctors, divided by the Louisiana reproductive-age women ("Method 2"). (*Id.* at 7–8.) The controlling standard, by Defendant's reckoning, mandated that this Court "determine[] the fraction of women burdened by an admitting privileges law by (1) taking the number of women who must travel significantly farther to reach a qualified provider, and (2) dividing by all women of reproductive age in the state." (*Id.* at 6 (citing to *Abbott I*, 734 F.3d at 415, and *Abbott II*, 748 F.3d at 598, 600).

Defendant discerns fatal flaws in the Court's two methods. (*Id.*) In her view, this Court's Method 1 employed an "incorrect" numerator as well as an "incorrect" denominator. (*Id.* at 8.) The numerator should not have incorporated the actual and documented number of abortions provided by the relevant doctors in 2013. (*See* Doc. 216 ¶¶ 308, 311, at 82.) Instead, it should have used the number of abortions that these doctors could theoretically provide while working "at a considerably higher rate" and at a "higher capacity." (Doc. 229-1 at 8.) Next, the

denominator should not have been the total number of abortions provided in Louisiana. (*See* Doc. 216 ¶¶ 308, 311, at 82.) Rather, the number of abortions provided to non-Louisiana women in every Plaintiff clinic should have been subtracted. (Doc. 229-1 at 8.) Such a subtraction, she argues, would have necessarily led to a "significantly lower" denominator. (*Id.*) As to Method 2, Defendant contends it exhibits one defect. In Defendant's words, "[t]he numerator should have been the number of Louisiana women required to travel significantly farther to reach a qualified provider," (*Id.* at 7), not the number of women of reproductive age, (*See* Doc. 216 ¶ 311, at 82). In sum, Defendant concludes that reversal is likely "because the Court's analyses used incorrect numbers that significantly inflated the percentages of Louisiana women allegedly denied abortion access." (Doc. 229-1 at 8.)

Moving beyond the large fraction test, Defendant adds that she is likely to prevail due to this Court's incorrect application of administrative law's pendent principle. In her words, this Court "legally erred in disregarding the Secretary's determination that Doe 2 had qualifying privileges at Tulane" and "exceeded its jurisdiction" by doing so. (*Id.* at 9.) In support of this second "likely" ground, Defendant makes three points.

First, because the Secretary determined that one doctor, Doe 2, could continue legally providing abortions" at one of the three party clinics, this Court overstepped its rightful bounds. (*Id.*) Thus, even as she denies the applicability of this body of law's seminal case, *Chevron U.S.A., Inc. v. Natural Res. Defense Council*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), describing any "*Chevron* analysis"[5] as "inappropriate," (Doc. 229-1 at 9, 10), she maintains that her interpretive decision "should have settled the question of the Act's impact on

[5] The Supporting Memorandum leaves it unclear whether this phrase is being used as a shorthand for all forms of agency deference, a fact noted by this Court in the Ruling. (*See* Doc. 216 ¶ 236, at 64.)

Doe 2's ability to continue providing abortions." (*Id.* at 9–10.) In other words, the law's "indisputable" practical effect resolved any constitutional issues, for the then-Secretary, "the state official charged with enforcing the Act, made a sworn declaration that Doe 2's privileges were satisfactory and allowed him to continue providing abortions at Causeway." (*Id.* at 9 (referring to JX 191 ¶ 6).) Even while this decision merited deference as the official charged with enforcing Act 620, then, this case did not present the classic scenario suitable for the application of a "*Chevron*-type analysis": "[A]ggrieved plaintiffs challeng[ing] an agency's interpretation of a law as exceeding the agency's statutory authority." (*Id.* at 9 & n.2 (citing to *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2439, 189 L. Ed. 2d 372 (2014), and *Women's & Children's Hosp. v. State*, 2007-1157 (La. App. 1 Cir. 02/08/09); 984 So. 2d 760, 762, 766).)

Second, Defendant contends that this Court should have still accepted her interpretation of the law as incontestable and unreviewable, her interpretive declaration obviating this Court's authority to review Act 620's constitutionality. This is so, Defendant argues, because "[a] federal court lacks independent authority to interpret state law or to bind state officials to its interpretation of state law." (*Id.* at 10 (quoting *Pennhurst v. Halderman*, 465 U.S. 89, 106, 104 S. Ct. 900, 911, 79 L. Ed. 2d 67 (1984)), 10 n.3 (citing for support *Earles v. State Bd. of Certified Pub. Accountants of La.*, 139 F.3d 1033, 1039 (5th Cir. 1998)); *Saahir v. Estelle*, 47 F.3d 758, 761 (5th Cir. 1995); and *Hughes v. Savell*, 902 F.2d 376, 378 & n.2 (5th Cir. 1990)). Concededly, "a federal court has limited authority to interpret state law in a diversity case," but, "[i]n a federal question case like this one, . . . a federal court has no authority to tell a state official how to interpret state law, even if the court would reach a different conclusion on its own." (*Id.* (citing to *Lelsz v. Kavanaugh*, 807 F.2d 1243, 1252 (5th Cir. 1987)).) By not accepting the Secretary's interpretation of Act 620 in preliminarily adjudicating its apparent

unconstitutionality, Defendant contends that this Court therefore defied the rule set forth in *Pennhurst*.

Third, Defendant argues that this Court lacked any jurisdiction because Doe 2 himself has no standing to challenge the Secretary's application of Act 620 and even benefitted from her then chosen construction. (*Id.* at 10–11.) Doe 2 "merely speculated that a future Secretary might change her mind. . . . [, b]ut plaintiffs lack standing to challenge unknowable future applications of a law." (*Id.* at 11 (citing to *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147, 185 L. Ed. 2d 264 (2013)). Like Doe 2, she argues, this Court "lacked jurisdiction to enjoin the Act based on speculation about how future Secretaries might apply it [to Doe 2 as well as other doctors]—especially on a facial challenge." (*Id.* at 10–11.) To summarize, the Court's alleged error was not to "accept[] as fact the Secretary's approval of Doe 2's . . . privileges" as consistent with Act 620's mandate or treat her construction of a plain law, as encapsulated in a single declaration, (*Id.* at 9), as that statute's singularly binding and conclusive reading. (*Id.* at 11.)

Thereupon, Defendant contends that the other three factors required for a stay pending appeal, when set against this professed likelihood, militate in her favor. As to the second—whether she will be irreparably harmed—she insists no reasonable doubt about this possibility can be raised, as "[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." (*Id.* at 12 (citing *Abbott I*, 734 F.3d at 419).) As to the fourth—the public's interest—Louisiana's "interest and harm" has "merge[d] with that of the public," by implication rendering any other public concern irrelevant. (*Id.* (quoting *Abbott I*, 734 F.3d at 419).) She explicitly discounts the pertinence of the third factor—

"whether the issuance of a stay will substantially injure the other parties interested in the proceeding"—based on her perceived likelihood of appellate success.[6] (*Id.*)

2. Plaintiffs' Opposition

Filed on February 12, 2016, pursuant to this Court's order, (Doc. 231), the Opposition counters Defendant's every point with Plaintiffs' own ten reasons for why a stay must not be allowed, "[n]one of the relevant factors, nor consideration of equity, weigh[ing] in favor of a stay." (Doc. 232 at 2.)

The first five deal with the validity of this Court's large-fraction analyses. First, Plaintiffs argue that, since "this Court need[ed] only find that the challenged statute imposes an undue burden on the women whom Plaintiff serves," the large fraction test "need not even be met in order for the Fifth Circuit to affirm this Court's injunctive relief." (*Id.* at 3.) For this reason, Defendant's attack, (Doc. 229-1 at 6–8), on this Court's two mathematical computations, (*See* Doc. 216 ¶¶ 305–15, at 81–83), "misses the mark." (Doc. 232 at 2.) Second, regardless of the foregoing, Plaintiffs contend that this Court properly applied the large fraction test. While Defendant "argues that the 'large fraction' test requires an analysis of distance traveled by women to reach an abortion provider," (*Id.* at 3 (construing Doc. 229-1 at 6)), she has "mistaken[ly]" construed this test, since "a substantial obstacle in the undue burden analysis can take different forms." (*Id.* at 3.) Rather, *Casey* "had nothing to do with driving distances." (*Id.* at

[6] The Supporting Memorandum's final substantive paragraph states the reasons for the Motion for Stay's expedited consideration. (Doc. 229-1 at 12.) Though this order was not issued by Friday, February 12, 2016, as requested, it was issued on the first business day thereafter so as to allow Plaintiffs to respond in the interest of fairness and justice. *Cf.* FED. R. CIV. P. 1. Regardless, the reasons summarized therein have no bearing on the Motion for Stay's substantive merits, as analyzed in this order. *See infra* Part III.B.

3–4 (construing *Casey*, 505 U.S. at 887–95).) As the Fifth Circuit has recognized, "*Casey* counsels against striking down a statute *solely* because women may have to travel long distances to obtain abortions," (*Id.* at 4 (emphasis added) (quoting *Abbott II*, 748 F.3d at 598).)

Third, Plaintiffs characterize "Defendant's assertion that a 'large fraction' of women who seek abortions from Louisiana" will not be impacted when one doctor, rather than six, can legally provide such operations as "def[ying] common sense." (*Id.* at 4–5.) Fourth, the Court's calculations (and related findings) "were supported by substantial record evidence." (*Id.* at 5.) Fifth, Plaintiffs address Defendant's argument that this Court should have excluded non-Louisiana women from its calculations by stressing *Casey*'s focus on "women for whom the law is a restriction, not *women of a particular state* for whom the law is a restriction." (*Id.* (emphasis in original)) *Casey* did not even "mention[] the residency of the women affected by the challenged requirements." (*Id.* (construing *Casey*, 505 U.S. at 894).) Thus, because "Act 620 restricts the rights of all Americans seeking an abortion in the state of Louisiana" and because the large fraction test "contains no residency test," Defendant's reading lacks any legal support. (*Id.*) As further support for this proposition, Plaintiffs note that the Constitution forbids a state from infringing on the fundamental rights of out-of-state residents. (*Id.* (citing U.S. CONST. art. IV, § 2, and *Corfield v. Coryell*, 6 F. Cas. 546, (C.C. E.D. Pa. 1823)).) Defendant has essentially asked this Court to treat such women as "having no weight" for ascertaining the constitutionality of a restriction on a fundamental right, (*Id.*), though "[a] law that deprives out-of-state women of their constitutional rights is flatly unconstitutional," (*Id.* (citing *Doe v. Bolton*, 410 U.S. 179, 200, 93 S. Ct. 739, 751–52, 35 L. Ed. 2d 201 (1973)).)

The next two reasons concern Defendant's second argued ground for reversal. While Defendant insists that this Court should have given "due deference" to the Secretary's "opinion,"

which would have in turn diminished its large fractions, Plaintiffs first recount the nature of this opinion. (*Id.* at 6.) The declaration came only "one business day before the [relevant] evidentiary hearing," and the Secretary later testified that she had "limited knowledge and understanding of the hospital admitting privileges process, including what type of hospital admitting privileges meet Act 620's requirements." (*Id.* (referencing Doc. 191 at 202–07).) In fact, argue Plaintiffs, Defendant's own expert contradicted her construction. (*Id.* at 7.) Second, pursuant to well-established principles of administrative law and statutory interpretation,[7] this Court was bound to construe Act 620 according to "its plain meaning" and, if it found the law to be both plain and unambiguous, this alone determines its constitutionality. (*Id.*) Because the Court did so, Plaintiffs maintain that precedent did not compel this Court to "uncritically defer to Secretary Kliebert's flawed interpretation of the law" or to disregard its terms "solely on the basis of . . . [her] assertions." (*Id.*) For these two reasons, the perception that this Court exceeded its jurisdiction is "frivolous." (*Id.* at 8.)

Plaintiffs' last three arguments focus on the remaining three elements for a stay's issue,[8] Plaintiffs holding that "Defendant cannot establish that *any* of these factors weigh in her favor." (*Id.* (emphasis in original).) Frist, Defendant has not hinted at any "damage" that would follow from the injunction's imposition.[9] (*Id.* at 9 (citing to Doc. 216 ¶ 408, at 110).) Second, regardless of the harm to Defendant effected by the Ruling, a stay of the injunction would harm numerous

[7] These principles are discussed below, *see infra* Part III.B.2, as well as in the Ruling, (Doc. 216 ¶¶ 235–49, at 64–69).

[8] Plaintiffs also disparage Defendant's attempt to address these issues in "two desultory sentences." (Doc. 232 at 8.)

[9] This statement is somewhat inaccurate. While Defendant did not prove any type of damages at trial, she does now maintain that she will suffer a form of irreparable harm. (Doc. 229-1 at 12.) Whether that form of harm outweighs others' injuries or the totality of the public interest is an entirely separate question. *See infra* Part III.B.2–5.

parties and persons, including the Plaintiffs, their physicians, and their patients. (*Id.* (citing to Doc. 216 ¶¶ 403–06, at 109–10).) Third, even as Defendant states that the public interest has merged with the Secretary's own and "offers a circular complaint," "the public interest is *best* served by not enforcing an unconstitutional state law." (*Id.* (emphasis added) (citing to Doc. 216 ¶ 409, at 111).)

As Plaintiffs ultimately conclude, with only compelling circumstances sufficient to support a stay, Defendant's purported failure to make a "strong showing that she is likely to succeed on the merits" and "to meaningfully address the remaining factors" compels denial of the Motion for Stay. (*Id.* at 9–10.)

III. DISCUSSION

A. GOVERNING STANDARD

Pursuant to Federal Rule of Appellate Procedure 8(a)(1)(A), "[a] party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal." FED. R. APP. P. 8(a)(1)(A); *Rivera-Torres v. Ortiz Velez*, 341 F.3d 86, 95 (1st Cir. 2003). The district court must thereupon consider four factors in deciding whether to grant such a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Abbott I*, 734 F.3d at 410 & n.9 (relying on, among others, *Nken v. Holder*, 556 U.S. 418, 425–26, 129 S. Ct. 1749, 1756, 173 L. Ed. 2d 550 (2009)); *see also, e.g.*, *Wilde v. Huntington Ingalls, Inc.*, 616 F. App'x 710, 712 (5th Cir. 2015) (quoting *id.*); *Woodfox v. Cain*, 789 F.3d 565, 568–69 (5th Cir. 2015) (same). The movant bears the burden of

showing each and every circumstance, and a stay "is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken*, 556 U.S. at 433–34; *see also, e.g.*, *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (citing *id.*). Although a particularly strong likelihood of success may negate the need to prove extensive harm, "an adequate showing" as to all factors must still be made. *Abbott I*, 734 F.3d at 419; *cf. Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1119 (9th Cir. 2008) ("[T]he standard for granting a stay is a continuum." (internal quotation marks omitted)).

Like the injunctive remedy that it so resembles, a stay is "always an extraordinary remedy." *Bhd. of Ry. & S.S. Clerks, etc. v. Nat'l Mediation Bd.*, 374 F.2d 269, 275 (D.C. Cir. 1966); *accord, e.g.*, *Nabers v. Morgan*, No. 3:09-cv-00070-CWR-FKB, 2011 U.S. Dist. LEXIS 28408, at *3, 2011 WL 830217, at *3 (S.D. Miss. Mar. 4, 2011) (quoting *id.*). The burden upon the movant is accordingly a heavy one. *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 988, 990 (D.D.C. 2006); *see also, e.g.*, *Phoenix Global Ventures, LLC v. Phoenix Hotel Assocs., Ltd.*, No. 04 Civ. 4991 (RJH), 2004 U.S. Dist. LEXIS 24079, at *8, 2004 WL 2734562, at *2 (S.D.N.Y. Nov. 29, 2004); *U.S. v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1084 (2d Cir. 1995). In the course of this analysis, imperfectly and roughly, equities must be balanced. *See, e.g.*, *Winter v. NRDC, Inc.*, 555 U.S. 7, 23, 129 S. Ct. 365, 376, 172 L. Ed. 2d 249 (2008) ("Even if plaintiffs have shown irreparable injury . . . , any such injury is outweighed by the public interest and the [balance of the equities]."); *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 978 (D.C. Cir. 1985) (denying motion for stay when "the petitioners . . . failed to establish that they have a substantial case on the merits, and . . . further failed to demonstrate that the balance of equities or the public interest strongly favors the granting of a stay").

B. APPLICATION

1. Likely Success on the Merits

(a) Likelihood of Reversal for Failure to Apply Defendant's Version of the Undue Burden Test

For Defendant to merit a stay on this first ground, she must prove that the Court's application of the standard set forth in *Roe*, *Casey*, and their Fifth Circuit descendants was in error. Under that precedent, the ultimate question for the Court was whether a likely effect of Act 620 is to place an undue burden or substantial obstacle in the path of women's right to an abortion. As noted above, *see infra* Part II.B.1, Defendant reduces the relevant test to a single formulation: "the Fifth Circuit determines the fraction of women burdened by an admitting privileges law by (1) taking the number of women who must travel significantly farther to reach a qualified provider, and (2) dividing by all women of reproductive age in the state." (Doc. 229-1 at 6 (citing to *Abbott I*, 734 F.3d at 415).) Her entire brief as to the probability of success on this first ground depends upon the incontestable soundness of this particular construction.

When *Roe*, *Casey*, *Abbott* I, *Abbott* II, and other recent cases are examined in toto, however, one conclusion follows: Defendant has read too narrowly the Fifth Circuit's test for determining whether the burden is "undue" or the obstacle "substantial" by arguing that the *sole* method for determining undue burden or substantial obstacle rests on the distance a woman must travel to reach a qualified provider. (Doc. 229-1 at 6.) While it is true that the Fifth Circuit's recent jurisprudence considered distance travelled as *a* factor, *see, e.g.*, *Abbott I*, 734 F.3d at 415; *Abbott II*, 748 F.3d at 597–98, these cases do not hold or suggest that this is the only way that undue burden can be measured, *see, e.g.*, *Currier*, 760 F.3d at 457–58 (holding that where the effect of the law is to remove all access to abortions within a state, the law is unconstitutional).

Instead, since *Casey*, whether an undue burden exists has always been more than just a question of miles traveled. *See, e.g.*, *Casey*, 505 U.S. at 878 ("Unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right."). The full panoply of "effects within the regulating state" must be considered; distance is only one salient factor. *See Currier*, 760 F.3d at 457, 458.

Here, the critical issue is not distance but availability and access. In this case, the evidence showed that the effect of implementing Act 620's admitting privileges requirement would be to eliminate altogether the ability at least four of Louisiana's six abortion providers to perform abortions in Louisiana. (Doc. 216 ¶¶ 305–21, at 405–06.)[10] Of the two remaining doctors able to perform abortions, one would be unable to do so at one of the two facilities where he now performs abortions. (*Id.*)

Further, no fewer than three of Louisiana's five abortion facilities would be left without any provider and therefore would likely close. (*Id.*)[11] This would leave, at most, two facilities with half their normal staff of physicians to serve the entire state which, the evidence showed, could not be done. (*Id.*) This would result, regardless of the distances to be travelled, in a large fraction of women being unable to get an appointment at a Louisiana abortion facility *at all.* This would cause significant and potentially dangerous delays for women seeking an abortion which, in turn, would cause an increased health risk for the patient. (*Id.*) It would also result in an

[10] In its Ruling, the Court found as a matter of fact that Act 620 would cause the loss of five of Louisiana's six abortion physicians. (Doc 216 ¶¶ 298–302 at 78–80, ¶ 305 at 81.) However, because the reasons given by Dr. Doe 3 for discontinuing his abortion practice cannot be considered under Fifth Circuit precedent, Doe 3's likely departure from abortion practice was not considered. (*Id.* ¶ 363, at 98.)

[11] If Doe 3's likely departure could be considered, four of five of Louisiana's six abortion facilities would close. (Doc. 216 ¶¶ 305–21, at 81–85.) However, for reasons stated above, it was not.

increased risk of self-performed, unlicensed and unsafe abortions. (*Id*.) These are but some of the deleterious effects likely to flow from Act 620's enforcement, all of which must be borne in mind pursuant to *Casey*'s clear terms.

In sum, the Court rejects Defendant's suggestion that distance travelled is the sole criteria for gauging undue burden. Regardless of the issue of travel distance, Act 620's admitting privileges requirement would place a substantial obstacle in the path of a large fraction of women seeking an abortion in Louisiana. *Casey* itself, as Plaintiffs persuasively stress, (*See* Doc. 232 at 5), did not make distance the sole lodestar for measuring an undue burden; even in highlighting the usefulness of distance in this limited regard, neither has the Fifth Circuit. As such, Defendant's first argument seems unlikely to prevail on appeal.

(b) Viability of Defendant's Proposed Numerator and Denominators

Without citing to a single case so holding, (*See* Doc. 229-1 at 7–8), Defendant next argues that comparing the number of women no longer able to get an abortion in Louisiana (because of the probable loss of two thirds of the abortion physicians in Louisiana) to either the number of women seeking abortions in Louisiana or the number of women of reproductive age is not an "analysis prescribed by circuit law." (*Id.* at 7.) As this Court explained in the Ruling, (Doc 216 ¶¶ 35–58), in determining whether a law has caused a substantial obstacle to be placed in the path of a large fraction of women seeking an abortion, the Fifth Circuit's "binding precedent" requires that the number of women of reproductive age be used as the denominator. *Cole*, 790 F.3d at 589 (citing *Abbott I*, 734 F.3d at 414; *Abbott II*, 748 F.3d at 598; and *Lakey*, 769 F.3d at 299). But, because there is some suggestion that the denominator can consist only of women

"seek[ing] an abortion," *Cole*, 790 F.3d at 589 (quoting *Lakey*, 769 F.3d at 299), this Court used both numbers, the results equally unconstitutional.

Defendant begins with criticism of the numerator used by the Court: the number of patients who would no longer have ready access to an abortion because of the severely reduced number of available physicians and clinics. (Doc. 229-1 at 7–8). This number was calculated by subtracting the number of women being treated by doctors who would no longer be able to provide abortions because of Act 620, from the number of women who seek abortions in Louisiana annually. Alternatively, the Court subtracted that number of women from the total number of women of reproductive age in Louisiana.

The first basis for Defendant's attack is factual: Defendant's contention that "undisputed testimony" shows that the two doctors unaffected by Act 620, Doctors John Doe 3 ("Doe 3") and John Doe 5 ("Doe 5"), could have performed more abortions than they were actually performing. (*Id.* at 8.) This, argues Defendant, "significantly inflate[s]" the percentage of women denied access to abortion. (*Id*. at 7.) The Court is unpersuaded by this argument.

The source for the Court's finding that Doe 5 performed 2,950 abortions in 2013, (Doc. 216 ¶ 308, at 82), was Doe 3's Declaration, (JX 110 ¶ 7), in which he stated that he performed approximately 2,000 abortions at Delta Clinic and 950 abortions at Woman's Clinic. (JX 110 ¶ 7). The testimony cited by Defendant is not inconsistent with this conclusion. Doe 5 testified that, "in a typical week" he performed between 40 to 60 surgical abortions and 20 to 30 chemical abortions. (Doc 168-6 at 8.) At another point of his testimony, he lowered his estimate to 40 to 60 procedures per week "on average." (*Id*. at 15.) Given the fact that it is likely that Doe 3 is not performing abortions 52 weeks per year, the estimated ranges given in his deposition are consistent with the *yearly* estimate given in his Declaration. The Court carefully weighed the

evidence on this point and concludes that this number used in the Court's calculation is well supported in the record.

Doe 3 has an active general obstetrical practice in addition to his abortion practice. (Doc. 216 ¶ 56, at 22.) In his abortion practice, he testified that he sees approximately 20-30 abortion patients per week. This testimony was the basis for the Court's conclusion that, (assuming a 50 week work year), Doe 3 was seeing approximately 1,000 to 1,500 patients per year (*Id.* ¶ 58, at 22.) Defendant points to Doe 3's testimony that "there have been occasions at Hope when you've provided between 40 and 50 abortions in one day []," (Doc. 190 at 155), to argue that the Court's conclusion was in error. However, to base Doe 3's yearly abortion rate on an aberrational single day number, as Defendant suggests, would fly in the face of the weight of the evidence, contravene both common sense and reality, and unrealistically deflate the number of women denied access to abortion. It is the Court's duty to predict the realistic effect of Act 620 on the right of women to obtain an abortion in Louisiana. It is not for the Court (or for the Defendant) to presume that a party will choose to make the exceptional into the typical or to somehow force a person to abandon their every other professional effort just so as to manufacture a better number. Rather than indulging in speculation, the Court carefully weighed the evidence on this point and concludes that its calculation is well supported by the record.

Defendant thereafter contends that the Court erred in its alternative use of the total number of abortions performed in Louisiana in calculating the numerator because this population includes some patients from outside Louisiana. (Doc. 229-1 at 8.) Defendant points to evidence that non-Louisiana residents make up 31% of the patient population at one of the six clinics, (Hope in Shreveport). (Doc. 216 ¶ 31, at 18.) The cogency of this ground is undermined by three facts.

The first two are evidentiary. First, Defendant herself provided no additional evidence as to what percentage, if any, the other clinics' patients are from out of state, her present argument predicated on extrapolation. Relatedly, unless Louisiana somehow intends to bar its borders to out-of-state residents, Hope's *capacity* (and that of the other clinics) will remain practically circumscribed by its (and their) total number of patients, whether they come from within or without this state. Certainly, neither logic nor law compel this Court to pretend that such visits both do not happen and do not affect the ability of the clinics to provide abortion services to women *in* Louisiana as well as the women *of* Louisiana. *Cf. Cole*, 790 F.3d at 597–98 (describing it as "wholly inequitable to ignore . . . reality"). Second, even if one were to remove non-residents from the large fraction analysis, the percentage of Louisiana women denied access to an abortion remains the same, roughly 55%.[12] Mathematically, a fraction greater than 50% is still a large one.

Third (and more importantly), Defendant provides no legal support for her contention that non-residents must be excluded in the large fraction analysis, *Casey* holding to the contrary. As the Supreme Court there observed, "[l]egislation is measured for consistency with the

[12] For this analysis, the Court accepts Defendant's premise that 31% of the total annual patient population for all abortion facilities were nonresidents. This means that 69% of the total annual patient population for all abortion facilities were Louisiana residents. The total annual patient population for all abortion facilities was 9,976. 69% of this number is 6,883. The total number of women obtaining an abortion by Does 3 and 5 after Act 620 is enacted is 4,500. Critically, the same 31/69% ratio must be applied again at this point; this is critical because Louisiana women would have to compete with non-residents for the limited number of available abortion physicians, and access would likely be in the same proportion as with the total patient population. This means that 69% percent of women obtaining an abortion after Act 620 is implemented are Louisiana residents, and this total (69% of 4,500) is 3,105. Thus, the total number of women denied access to abortions after Act 620 - that is, 3,105 (total number of Louisiana women obtaining abortions after the Act) divided by 6,883 (total number of Louisiana women obtaining abortions before the Act) - is about 55%. 55% is, by any reasonable measure, a large fraction.

Constitution by its impact on those whose conduct if affects"; as it explicitly stated, "[t]he proper focus of constitutional inquiry is the group for whom the law is a restriction." *Casey*, 505 U.S. at 894. Similarly telling language appears in *Lakey*. *See Lakey*, 769 F.3d at 299 (emphasizing that the appropriate denominator includes "includes *all* women affected by these limited options," as the relevant requirement "applie[d] to every abortion clinic in the State, limiting the options for all women *in* Texas who seek an abortion" (emphases added)). Not to be understated, this understanding of the inviolability of a constitutional right can be partly justified by the Constitution's Privileges and Immunities Clause. U.S. CONST. art. IV, § 2, cl. 1; *see, e.g.*, *Sup. Ct. of N.H. v. Piper*, 470 U.S. 274, 281 n.11, 105 S. Ct. 1272, 1277, 84 L. Ed. 2d 205 (1985) ("The Court has never held that the Privileges and Immunities Clause protects only economic interests." (citing *Doe v. Bolton*, 410 U.S. 179 (1973) (concluding that a Georgia statute permitting only residents to secure abortions violated the Privileges and Immunities Clause))); *Bach v. Pataki*, 408 F.3d 75, 90 (2d Cir. 2005) ("The Supreme Court has never held that the Privileges and Immunities Clause protects only economic interests." (internal quotation marks omitted)). In fact, *Cole* itself cited to *Doe*, 790 F.3d at 569 n.5, in which the Supreme Court forbade a state from restricting the abortion access of out-of-state residents on the basis of this clause, *Doe*, 410 U.S. at 200.

For these reasons, this Court does not find that Defendant has made the strong showing of likely success on the merits as to this issue required for a stay to be granted.

(c) Likelihood of Reversal on Basis of Non-deference

Lastly, this Court finds that Defendant's administrative law argument is not a likely ground for reversal. In Defendant's view, the fact that she has once declared her intent to

interpret Act 620 in a way that minimizes its effects upon Doe 2 "settle[s] the question of the Act's impact," her authority to enforce the law affording her discretion to do so, and has deprived this Court of the power to deem the law as written to be unconstitutional. (Doc. 229-1 at 9–10.) To do otherwise, Defendant argues, is to impermissibly "bind state officials to . . . [a federal court's] interpretation of state law." (*Id.* at 10.)

Defendant's first point, however, cannot be squared with the binding principle that "[a]gencies exercise discretion only in the interstices created by statutory silence or ambiguity." *Util. Air Regulatory Grp.*, 134 S. Ct. at 2442; *see also, e.g.*, *Sexton v. Panel Processing, Inc.*, 754 F.3d 332, 336 (6th Cir. 2014) (rejecting an agency interpretation as contrary to the statutory language as interpreted). As this Court stressed in the Ruling, "no deference is owed to an opinion contrary to . . . [a] law's unambiguous and plain meaning." (Doc. 216 ¶ 236, at 64.) Under both Louisiana and federal law, deference is hence only given when the statute is truly "ambiguous" regarding the precise "question at issue" and if the agency's interpretation is a "reasonable" and hence "permissible construction of the statute" at hand. (*Id.* ¶¶ 237–38, at 65–66.) In other words, if the law's certain meaning can be discerned via the standard array of interpretive tools, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808 (1997), an administrative actor cannot imbue its text with any other meaning by exercising its supposed discretionary prerogative, *see, e.g.*, *Doctors Hosp. of Augusta v. Dep't of Health & Hosps.*, 2013 1762 (La. App. 1 Cir. 09/17/14); 2014 La. App. Unpub. LEXIS 481, at *19–20, 2014 WL 4658202, at *7. Despite the rise of the administrative state, then, what was said in 1803 remains equally true today: "It is the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60 (1803), an agency accorded deference solely when a law's plain and unambiguous import is not susceptible to

definite derivation, *see Salazar-Regino v. Rominski*, 415 F.3d 436, 448 (5th Cir. 2005) (citing this maxim in the context of weighing the reasonableness of an agency's particular interpretation). Plainly and unambiguously, Act 620 does not recognize Doe 2's privileges as sufficient. Notwithstanding the Secretary's assessment, that plain meaning must control when a court must classify a physician's so-called "admitting privileges" for its purposes, a fact that depletes Defendant's second ground of its essential likelihood.

Defendant's second claim, meanwhile, misconstrues the modest effect of the Ruling and Judgment. In deeming the Secretary's interpretation unpersuasive due to its inconsistency with the Act's express text, her own expert's statements, and her less than clear testimony, this Court did not order her to conform to its own view of state law, as *Pennhurst* and its progeny forbid, *see, e.g.*, *Pennhurst*, 465 U.S. 89. Whether she would or would not act as the statute plainly commands was not relevant to whether Act 620, as written and enacted, imposed an undue burden upon the exercise of a recognizable constitutional right. As such, this Court did not order the Secretary to adhere to a particular state law or enforce its own construction of that statute. Subject to a later trial, it preliminarily held the admitting privileges requirement to be unconstitutional. The result of such a determination—that the Secretary cannot enforce an unconstitutional state law—does not mean she was ordered to enforce it in accordance with this Court's own terms, as no enforcement was actually demanded.

In addition, Defendant has misread *Pennhurst*. In this seminal case, the Supreme Court held that the Eleventh Amendment bars federal injunctive relief against a state official if (1) "the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act," and (2) "if the conduct to be restrained is within the scope of

authority delegated to the official by state law." *Pennhurst*, 465 U.S. at 101 n.11, 102 (internal quotation marks omitted). Thus, in other circumstances, federal jurisdiction over a claim based on the existence of a federal question is not barred under *Pennhurst* even when "the resolution of . . . constitutional issues . . . requires this court to ascertain what state law means." *Coalition of N.J. Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 673 (D.N.J. 1999). For this very reason, in soundly rejecting an argument akin to Defendant's own, the Third Circuit has observed—"The ascertainment of state law is an everyday function of the federal court"—and clarified: "[A]scertaining state law is a far cry from compelling state officials to comply with it." *Everett v. Schramm*, 772 F.2d 1114, 1119 (3d Cir. 1985); *cf., e.g., Okpalobi v. Foster*, 190 F.3d 337, 349 (5th Cir. 1999) ("We are convinced that Article III does not require a plaintiff to plead or prove that a defendant state official has enforced or threatened to enforce a[n abortion-related] statute in order to meet the case or controversy requirement when that statute is immediately and coercively self-enforcing."), *superseded on other grounds*, 244 F.3d 405 (5th Cir. 2001). No less and no more was done by this Court in the Ruling when it rejected Kliebert's construal, embodied in a single declaration lacking in the formal trappings of the most considered agency interpretations.

Three more observations are in order. First, even as she makes a plea for deference based on her role as Secretary of DHH, Defendant simultaneously demands to be released from the obligations to earn such deference. As emphasized above, as a matter of state and federal law, such deference can only come when the law in question has a meaning neither plain nor unambiguous. (*See also* Doc. 216 ¶ 236, at 64 (collecting the relevant cases).) The Secretary, however, has insisted upon such deference without meeting a single predicate; more colloquially put, she wishes to have her cake and eat it too. Second, no exercise of discretion can suddenly

transform an unconstitutional law into a constitutional stricture, and no administrative agent can insulate a plain law from constitutional scrutiny by demanding that a court forsake its duty under Article III. *Cf., e.g., Int'l Soc'y for Krishna Consciousness v. Eaves*, 601 F.2d 809, 818 (5th Cir. 1979) (noting that "there is clear Supreme Court authority that the probability of enforcement is not relevant to a court'' jurisdiction over an anticipatory challenge" to a statute). Due to this reason, the extent to which the Secretary's interpretation benefitted Doe 2 is irrelevant, as is his possible lack of standing to sue her. Regardless of her opinion, his privileges still do not satisfy the law as naturally construed, and as this Court is bound to apply the law's plain and unambiguous meaning, the beneficent effects of her construction cannot justify disregarding Act 620's language. Just as surely, the questionable claim that Doe 2 may lack standing to sue the Secretary[13] does not mean he was not impacted by Act 620's passage or enforcement,[14] and the fact that Kliebert's successor could change her mind about how to enforce the law does not deprive this Court of the power to declare it unconstitutional. *Cf., e.g., Virginia v. Am.*

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[13] "[W]here the plaintiff faces a credible threat of enforcement," standing exists. *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 907 (10th Cir. 2012); *cf. Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 99 S. Ct. 2301, 2308, 60 L. Ed. 2d 895 (1979) (finding standing where "a realistic danger of sustaining a direct injury as a result of a statute's operation *or* enforcement" existed (emphasis added)). In these situations, a plaintiff is typically "not . . . required to await and undergo [enforcement] as the sole means of seeking relief." *Consumer Data Indus. Ass'n*, 678 F.3d at 907; *see also, e.g., Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 9 (1st Cir. 2012) ("[T]he Supreme Court has made clear that when a plaintiff alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." (internal quotation marks omitted)); *R.I. Ass'n of Realtors v. Whitehouse*, 199 F.3d 26, 33 (1st Cir. 2002) ("[T]he Supreme Court repeatedly has found standing to mount pre-enforcement challenges to laws that had never been enforced.").

[14] In fact, that possibility strengthens the argument for denying deference to the Secretary's decision. To wit, if he could not "challenge the Secretary's application of the Act under *Chevron*," (Doc. 229-1 at 10–11), whatever it is, the legal foundation for her exercise of discretion should be clearly defined. Otherwise, injury with impunity may follow though both Louisiana and federal law bar "arbitrary" and "capricious" administrative action.

Booksellers Ass'n, Inc., 484 U.S. 383, 392-93, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988) (holding that the injury-in-fact requirement was met, in part, because "plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them"); *Steffel v. Thompson*, 415 U.S. 452, 459, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1974) ("[I]t is not necessary that [a party] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights."). That variability is irrelevant when the plain meaning leaves no other course open. Finally, even as it is still unclear what kind of deference the Secretary would like this Court to give her, her opinion appears in a single declaration submitted to this Court shortly before a hearing as a tool of litigation.[15] (*See* Doc. 232 at 6.) Even putting aside its dubiousness in light of the Secretary's subsequent questioning, it simply does not resemble the kind of formal agency opinions to which the greatest deference is owed. *See United States v. Mead Corp.*, 533 U.S. 218, 121 S.Ct. 2164, 150 L. Ed. 2d 292 (2001) (explicating the various forms of agency deference).

When controlling principles are applied, it is clear that Act 620, as drafted and signed, does "pose[]" a "present barrier to Doe 2's abortion practice in the New Orleans area," (Doc. 229-1 at 11), an interpretation consistent with that of Defendant's own expert, (*See, e.g.*, Doc. 193 at 94, 123; Doc. 216 ¶¶ 241–42, at 67), and not strongly alleviated by her one declaration. While well-established law compels this result, binding precedent clinches it: as the Fifth Circuit itself has written, "[t]o determine the constitutionality of a state law, we ask whether the Act, *measured by its text* in this facial attack, imposes a substantial obstacle to . . . previability[] abortions." *Lakey*, 769 F.3d at 293 (alteration in original) (emphasis added) (internal quotation

[15] The relevant declaration was submitted on June 19, 2015, (Doc. 154), and her entire opinion is embodied in a single paragraph, (*Id.* ¶ 6, at 3).

marks omitted). Hence, upon careful scrutiny, this final purported error thus does not form a likely ground for reversal.

2. Irreparable Harm to the Appellant

On this issue, the law is clear. "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Abbott I*, 734 F.3d at 419; *see also, e.g.*, *Veasey v. Perry*, 769 F.3d 890, 895 (5th Cir. 2014). The second element for a stay pending appeal has thus been suitably shown.

3. Injury to Others

Yet, as the Ruling makes clear, Plaintiffs and other persons will also endure great harm if Act 620 is enforced and thus if the Motion for Stay is granted. (Doc. 216 ¶¶ 364–91 at 99–106, ¶¶ 404–06 at 110.) The plaintiff clinics will face nearly insurmountable hurdles and may find themselves without a doctor able to provide abortions to a single woman, operations so sharply curtailed as to possibly prompt their closure; logically, their medical and administrative staff will suffer derivative yet equally harmful effects. *See, e.g.*, *Jackson Women's Health Org. v. Currier*, 940 F. Supp. 2d 416, 424 (S.D. Miss. 2013), *aff'd in part*, 760 F.3d 448. Most significantly, the women of Louisiana will face irreparable harms from the burdens associated with finding an abortion clinic with sufficient capacity to perform their abortions; "unreasonable and dangerous delays in scheduling abortion procedures" will likely follow from a decrease in the total number of available doctors. (Doc. 216 ¶¶ 404–06 at 110.) Crucially, "the deprivation of [any and all] constitutional rights," whether arising from the First, Second, or Fourteenth Amendment, has always "constitute[d] irreparable harm as a matter of law." *Cohen v. Coahoma Cnty., Miss.*, 805

F. Supp. 398, 406 (N.D. Miss. 1992) (citations omitted); *see also, e.g.*, *Deerfield Med. Ctr. v. Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Consequently, as with Act 620, the issuance of a stay will likely inflict an array of substantial injuries on the sundry parties interested in this proceeding, likely subjecting many to economic and physical injury and thousands of women to harm as irreparable as Defendant's own.[16] These are harms to which Defendant has given no persuasive response, (*See* Doc. 232 at 8–9), no "adequate" demonstration of this factor made, (*See* Doc. 229-1 at 12).

4. Public Interest

In addressing the final factor, Defendant maintains that its interest in enforcing Act 620 "merge[s] with that of the public." (Doc. 229-1 at 12 (citing *Abbott I*, 734 F.3d at 419).) True, "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3, 183 L. Ed. 2d 667 (2012). But the public interest, for purposes of ordering a stay, is never so monolithic. In declaring its apparent desire, no state entity, whether legislature or governor or both, annuls the countervailing concerns and rights of a state's every citizen. If so, this final factor will always favor the issuance of a stay when a state law, though found to be likely unconstitutional, is

[16] Thus, the Defendant misapplies *Abbott I* when she says that "[g]iven the State's likelihood of success on the merits, *any* showing of harm plaintiffs might make is not enough, standing alone to outweigh the other factors." (Doc. 229-1 at 12 (emphasis added) (citing *Abbott I*, 734 F.3d at 419).) First, Defendant has failed to show a likelihood of success on the merits. Further, in *Abbott I*, the Fifth Circuit expressly stated that the appellant had "adequate[ly]" shown every other factor, including "whether issuance of the stay will substantially injure the other parties interested in the proceeding." 734 F.3d at 419. The Fifth Circuit did not suggest that a strong likelihood of success, even if found, somehow made "any showing of harm" irrelevant. (Doc. 229-1 at 12.) It simply stated the "strong harm" shown by a plaintiff was not itself enough considering defendant's sufficient showing of every other factor. (*Id.*)

challenged, no further analysis ever required. As case law well shows, however, the public interest to be weighed is broader than a state's asserted claim. Indeed, as the Fifth Circuit has noted, "it is always in the public interest to prevent the violation of a party's constitutional rights," *Currier*, 760 F.3d at 458 n.9 (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012)), and not too much forbearance is required when the relevant law has never gone into effect, *cf. R.I. Med. Soc'y v. Whitehouse*, 66 F. Supp. 2d 288, 303 (D.R.I. 1999). Thus, two different public interests here exist and must be set against each other, the state's asserted claim but one amidst many equally viable others.

5. The Balance

As the foregoing shows, the balance of factors clearly calls for the denial of the Motion for Stay. Defendant has failed to make the required strong showing of a likelihood of success on the merits, and thus the first factor favors denial. Per binding precedent, the second factor favors Defendant, but the third favors Plaintiffs as the injuries which others will endure with a stay's granting are likely to be substantial in comparison to Defendant's lone form of irreparable injury. As to the fourth factor, while there are competing public interests involved, preventing the violation of a constitutional right, in this case, prevails, especially since denying the Motion for Stay merely maintains the status quo.

IV. CONCLUSION

For the foregoing reasons, the overall balance of factors and justice counsels against a stay of the Ruling and Judgment. Based on the Supporting Memorandum, Defendant's probability of success is too low relative to the likely harms that will be inflicted upon Plaintiffs

(and others) and in light of the public interest, fully and holistically considered. Accordingly,

Defendant's Motion for Stay Pending Appeal, for Expedited Consideration, and for Temporary Stay, (Doc. 229), is DENIED.

Signed in Baton Rouge, Louisiana, on February 16, 2016.

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