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

JUNE MEDICAL SERVICES LLC, *et al.*,

Plaintiffs,

v.

REBEKAH GEE,

Defendant.

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

PLAINTIFFS' REVISED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Since this Court issued a preliminary injunction in this matter, the Supreme Court has held that the Fifth Circuit's interpretation of the undue burden test was incorrect. *Whole Woman's Health v. Hellerstedt*, __ U.S. __, 136 S. Ct. 2292, 2309 (2016) (hereinafter "*WWH*") ("The Court of Appeals' articulation of the relevant standard is incorrect."). This Court's conclusions of law applied the Fifth Circuit's legal standard, which *WWH* reversed. Specifically, this Court initially concluded, in line with Fifth Circuit precedent, that it could not consider evidence regarding whether the Act would actually serve its purported purpose to advance women's health and safety in practice, and could not weigh the Act's burdens against its benefits. (Doc. 216 ¶¶ 178, 333-35, 346, 351-52, 364-67, 372) (citing, *inter alia*, *Whole Woman's Health v. Cole*, 790 F.3d 563, 587 n.33 (5th Cir. 2015)). Accordingly, this Court ruled it could not resolve the parties' dispute over whether the Act is medically reasonable. (*Id.* ¶ 178(C) & n.41.) In addition, the undue burden test, as applied in the Fifth Circuit, precluded consideration of evidence related to the challenges women would face in obtaining abortions under the Act in their "real-world" context. (*Id.* ¶¶ 340-43) (citing, *inter alia*, *Cole*, 790 F.3d at 589). This Court therefore did not consider evidence regarding how the Act, when considered in the real-world context of abortion patients' poverty and transportation challenges, providers' fear of anti-abortion violence, pre-existing regulations, and other obstacles to abortion access, would impose unique burdens on Louisiana women. (*Id.* ¶ 344.) The Supreme Court has now clarified that these facts should be considered when evaluating whether an abortion restriction is constitutional. *See WWH*, 136 S. Ct. at 2302.

The Supreme Court affirmed in *WWH* that restrictions on access to abortion before viability must be subject to meaningful judicial scrutiny: rational basis review is simply not enough when "regulation of a constitutionally protected personal liberty" is at issue. *WWH*, 136 S. Ct. at 2309. Rather, under the undue burden analysis, a restriction must be shown to actually

"further" its purported interest, and it is constitutional only if its benefits outweigh its burdens. *See id.* at 2309-10. Additionally, in evaluating a restriction's benefits and burdens, courts must not simply defer to a State's assertions about any purported benefits or burdens, but must consider actual evidence. *See id.* at 2310-12. The Court explained its reasons for rejecting the Fifth Circuit's analysis:

> The rule announced in [*Planned Parenthood of Southeast Pennsylvania v. Casey*, 505 U.S. 833 (1992)] . . . requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer. And the [Court of Appeals was] wrong to equate the judicial review applicable to the regulation of a constitutionally protected personal liberty with the less strict review applicable where, for example, economic legislation is at issue. The Court of Appeals' approach simply does not match the standard that this Court laid out in *Casey*, which asks courts to consider whether any burden imposed on abortion access is "undue."

Id. at 2309-10 (citations omitted). Thus, *WWH* makes clear that courts have a "constitutional duty" to look beyond a State's assertions for restricting access to abortion to evaluate whether the restrictions at issue will actually advance any legitimate interests. *Id.* at 2310.

Further, the Supreme Court specifically affirmed the relevance of evidence related to medical reasonableness and "real-world" conditions in evaluating a law's furtherance of its purported interest and its burdens on women seeking abortion. *Id*. at 2301-03. Thus, the Court explained that "[t]he great weight of evidence demonstrates that, before the act's passage, abortion in Texas was extremely safe with particularly low rates of serious complications and virtually no deaths occurring on account of the procedure." *Id.* at 2302. It affirmed that abortion "has been shown to be much safer, in terms of minor and serious complications, than many common medical procedures not subject to such intense regulation and scrutiny," and that the challenged laws would not decrease risks, improve outcomes, or result in better care. *Id.* It also relied upon the district court's findings that the "requirements erect a particularly high barrier for poor, rural, or

disadvantaged women." *Id.* The Court also clarified that no single factor is determinative as to whether a restriction imposes an undue burden, but rather the burdens' impact must be evaluated cumulatively, and are undue if unjustified by the law's purported benefits. *Id*. at 2313.

While this Court has determined that the challenged Act was unconstitutional even under the Fifth Circuit's now-rejected interpretation of the undue burden test, as a result of the *WHH* decision, certain facts that Defendant argued were not legally relevant are now indisputably relevant and, indeed, critical to the constitutional analysis. To summarize, under *WWH*, the Court must consider (a) evidence regarding whether and how the restriction furthers the legislature's purported interest, which in this case, includes the Act's medical reasonableness, and (b) evidence regarding the actual burdens the restriction places on women seeking abortions. The Court must then assess the burdens and benefits of the restriction, and weigh the former against the latter to ensure that the burden the law imposes is not "undue." A re-evaluation of certain of the Court's conclusions of law also necessarily flows from applying the standard articulated by the Supreme Court.

Plaintiffs thus respectfully present the following supplemental findings of fact and conclusions of law. For the Court's convenience, in addition to proposing additional findings, Plaintiffs have indicated where they propose existing paragraphs in the Court's findings of fact remain unchanged, be modified, or deleted. Given the significant revisions to the conclusions of law required by the *WWH* decision, Plaintiffs have proposed entirely new conclusions of law.

I. INTRODUCTION

Delete first paragraph and replace with the following:

By Order dated January 26, 2016 (Doc. 216), and following a trial during which extensive evidence was submitted into the record, this Court preliminarily enjoined Defendant Rebekah Gee, in her official capacity as Secretary of the Louisiana Department of Health and Hospitals, from enforcing Section A(2)(a) of Act Number 620, amending Louisiana Revised Statutes § 40:1299.35.2.3 ("the Act" or "Act 620"),[1] against Plaintiffs 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"); Dr. John Doe, M.D. 1 ("Doe 1")[2] and Dr. John Doe, M.D. 2 ("Doe 2") (collectively, "Plaintiff Doctors") (collectively, "Plaintiffs"). (Doc. 5.) Now before the Court are the parties' contentions with regard to a permanent injunction in this matter. The Court requested supplemental proposed findings of fact and conclusions of law from the parties on a permanent injunction following the parties' agreement that the Court may proceed to rule on the permanent injunction – including additional findings of fact and conclusions of law required by *WWH* – based on the existing record. The parties further agreed that no further evidence is needed, apart from a short stipulation submitted jointly by the parties and accepted by

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[1] 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. The Court does so throughout this opinion unless it is recounting, as it later does, *see infra* Part VI, Act 620's legislative history. 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).

[2] 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 []."

the Court. (Doc. 255.) Therefore, pursuant to Federal Rule of Civil Procedure 65(a), and with the consent and agreement of the parties, the Court advances to the merits of the permanent injunction, consolidating it with the hearing on the preliminary injunction. The record from the preliminary injunction trial is part of the merits trial record, together with the stipulation of the parties.

Delete second-to-last paragraph and replace with the following:

After having considered the evidence, briefing, and record as a whole, for the reasons which follow, the Court declares Act 620 unconstitutional in all of its applications, and enters a permanent injunction barring its enforcement. 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 (1973), and pursuant to the test first set forth in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) ("*Casey*"), and subsequently refined in *Whole Woman's Health v. Hellerstedt*, __ U.S. __, 136 S. Ct. 2292, 2319 (2016) (hereinafter "*WWH*"). Act 620 is therefore declared unconstitutional, and its enforcement enjoined in all of its applications.

Delete last paragraph of section.

FINDINGS OF FACT

II. BACKGROUND AND PROCEDURAL HISTORY

1. No changes.

2. Dr. Rebekah Gee, ("Defendant," "Gee," or "Secretary,") is the Secretary of DHH.[3] Pursuant to § 40.2175.6, Gee "has the authority to revoke or deny clinics' licenses for violation of this or any other law." (Doc. 109 at 5 (citing La. Rev. Stat. § 40:2175.6).)

3.-4. No changes.

After paragraph 4, insert:

Shortly before trial, on April 20, 2015, DHH promulgated implementing regulations that include an admitting privileges requirement repeating the language of Act 620 and a penalty provision of $4,000 per violation. La. Admin. Code tit. 48, pt. I, §§ 4401 (definition of "active admitting privileges"), 4423(B)(3)(e), *available at* 41 La. Reg. 685, 696 (Apr. 20. 2015). These were accompanied by a statement averring that they "will only be enforced pursuant to Order" in the present case. *Id*. The Order the Court issues today thus embraces these regulations as well as the Act itself.

5. Hope and Bossier are two of four remaining licensed abortion clinics in Louisiana. (*See, e.g.,* Doc. 109 ¶¶ 4-5; Doc. 14 ¶ 10 at 3.) They are located in Shreveport and Bossier City, respectively. Causeway was an abortion clinic in Metairie. On January 26, 2016, this Court entered a preliminary injunction that did not encompass Causeway's primary physician, Doe 4,

[3] Secretary Gee took office in January 2016, replacing former Secretary of DHH Kathleen Kliebert, who was originally named in this lawsuit. Throughout these findings of fact and conclusions of law, references to "Secretary," "Secretary Gee," "Secretary Kliebert," "Gee" or "Kliebert," should be read as references to the Secretary of DHH.

who immediately ceased providing abortions. (Doc. 216, at 112; Doc. 255 ¶ 1.) The parties entered into a stipulation that would extend the injunction to him, which this Court so ordered on February 5, 2016. (Doc. 224.) Causeway closed permanently. (Doc. 255 ¶ 2.) It returned its license to DHH, effective February 10, 2016. (Doc. 255 ¶ 3.) Does 1 and 2 are two of five remaining physicians performing abortions in Louisiana. Doe 1 performs abortions at Hope; Doe 2 performs abortion at Bossier. (Doc. 109 ¶¶ 10-11; *see also, e.g.,* Doc. 14 ¶¶ 14-15.) Doe 4 no longer offers abortion care in Louisiana. (Doc. 255 ¶ 1.)

6.-11. No changes.

12. On May 12, 2015, the Partial MSJ was granted in part, finding that under then-binding Fifth Circuit jurisprudence, the admitting privileges requirement of Act 620 was "rationally related" to a legitimate state interest. (Doc. 138 at 25.) In all other respects, the motion was denied. (*Id.*)[4]

13.-16. No changes.

After paragraph 16, insert:

On January 26, 2016, the Court declared Act 620 facially unconstitutional and entered a preliminary injunction against enforcement of Act 620 as to the Plaintiffs – Hope, Bossier, Causeway and Does 1 and 2. (Doc. 216, at 111-112.) The parties stipulated that the injunction would also include Doe 4. (Dkts. 224, 226.) The Court's judgment was entered on February 10,

[4] *WWH* states that this Court must "consider the existence or nonexistence of medical benefits when considering whether a regulation of abortion constitutes an undue burden." *WWH*, 136 S. Ct. at 2309. Therefore, summary judgment on the issue of whether Act 620 was "rationally related" to the State's asserted interest in maternal health is not a proper application of the undue burden standard. This Court will not revisit the summary judgment decision, but this opinion supersedes that ruling.

2016 (Doc. 227) and Defendant filed her notice of appeal with the Fifth Circuit. (Doc. 228.) This Court denied Defendant's motions for a temporary stay and for a stay pending appeal (Doc. 229) on February 16, 2016 (Doc. 234).

On February 24, 2016, the Fifth Circuit granted Defendant's emergency motion for a stay pending appeal, *June Medical Services, L.L.C. v. Gee*, 814 F.3d 319 (5th Cir. 2016), with the result that, for the first time, the admitting privileges requirement of Act 620 became enforceable, requiring doctors without active admitting privileges to stop providing abortion care and clinics without such doctors on staff to stop providing abortion services. On March 4, 2016, the United States Supreme Court granted Plaintiffs' emergency motion to vacate the Fifth Circuit's stay, reinstating this Court's preliminary injunction. *June Med. Servs., L.L.C. v. Gee*, 136 S. Ct. 1354 (2016). On August 8, 2016, the parties agreed at a status conference that the Court could proceed to rule on a permanent injunction based on the existing evidentiary record and a stipulation regarding Causeway and Doe 4, following submission of supplementary proposed findings of fact and conclusions of law (Doc. 253). On August 24, 2016, the Fifth Circuit remanded Defendant's appeal "so that the district court can engage in additional fact finding required by the decision in *Whole Woman's Health v. Hellerstedt*." (Doc. 254.)

The Court today reaffirms its declaration that the admitting privileges requirement of Act 620 is unconstitutional on its face, and enters a permanent injunction barring enforcement of the law in all of its applications.

III. CONTENTIONS OF THE PARTIES[5]

17.-21. No changes.

IV. THE FACTUAL ISSUES

22.-23. No changes.

V. ABORTION IN LOUISIANA

A. Generally

24.-27. No changes.

B. The Clinics

28. At the time of trial, there were five women's reproductive health clinics in Louisiana that provided abortion services. (*E.g.,* Doc. 109 at ¶ 3; JX 109 ¶ 13.) Since then, one of those clinics, Causeway, has ceased operation. (Doc. 255 ¶¶ 2-3.)

(1) Hope

29.-31. No changes.

(2) Bossier

32.-35. No changes.

[5] The Court acknowledges that this summary reflects the parties' positions relating to preliminary, rather than permanent injunctive relief, and were made prior to the *WWH* decision. For the most part, however, the summary remains accurate.

(3) Causeway

36. Causeway was a women's reproductive health clinic located in Metairie, Louisiana, and had provided abortion and reproductive health services since 1999. (Doc. 109 ¶ 7; Doc. 14 ¶ 13.) Causeway was a licensed abortion clinic that sued on its own behalf and on behalf of its physicians, staff, and patients. (Doc. 14 at 1.)

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

38. Causeway employed two doctors who performed abortions, Does 2 and 4. (*See, e.g.*, Doc. 168 at 156.) Doe 2 performed approximately 25% of the abortions provided at Causeway, and Doe 4 performed the remaining 75%. (JX 117 ¶ 5.)

After paragraph 38, insert:

Doe 4 refrained from performing any abortions at Causeway subsequent to the Court's January 26, 2016 preliminary injunction order. (Doc. 255 ¶ 1.) A joint stipulation was filed on February 1, 2016 (Doc. 224) regarding the applicability of the injunction to Doe 4 and so ordered by the Court on February 5, 2016 (Doc. 226.) Causeway returned its license to DHH, effective February 10, 2016. (Doc. 255 ¶ 3.)

(4) Women's Health

39.-41. No changes.

(5) Delta

42.-44. No changes.

45. No changes, except to delete "Causeway in Metairie."

C. The Doctors

46. There are currently five doctors who perform all abortions in Louisiana. (Doc. 109 ¶ 4; *see also, e.g.,* JX 109 ¶ 14; Doc. 255 ¶ 1.)

(1) Doe 1[6]

47.-50. No changes.

(2) Doe 2

51. Doe 2 is a board-certified obstetrician-gynecologist and had been, until February 2016, one of two clinic physicians at Causeway and the only clinic physician at Bossier who provides abortion services. (Doc. 109 at ¶ 11; Doc. 255 ¶ 3.)

52. Doe 2 has been performing abortions since 1980. (Doc. 191 at 17:3-6.) Doe 2 performs medication abortions through eight weeks and surgical abortions up through the state's legal limit of 21 weeks, six days LMP. (*Id.* 21:16-22:4; JX 187 ¶ 4). He performs medication and surgical abortions at Bossier, and had performed only surgical abortions at Causeway. (*Id.* at 22:3-11.) In the year prior to trial, Doe 2 performed approximately 550 abortions at Bossier and 450 abortions at Causeway (*Id.* at 17:21-18:5).

53. No changes.

[6] Pursuant to this Court's order, Plaintiffs have provided monthly updates to the Court beginning in March 2016 regarding the status of the doctors' applications for admitting privileges. There has been no material change to the privileges status of Dr. Does 1 through 6, except that Dr. Doe 4 no longer intends to pursue hospital admitting privileges in light of the closure of Causeway. (Letter of May 2, 2016, Doc. 246.)

54. Doe 2 has been unsuccessful in getting active admitting privileges within 30 miles of Bossier and, prior to Causeway's closure, had been able to obtain only limited privileges, which did not meet the requirements of Act 620, within 30 miles of Causeway. (*See, e.g.,* Doc. 191 at 24:23-29:18.)

(3) Doe 3

55.-60. No changes.

(4) Doe 4

61. Doe 4 is a board-certified obstetrician-gynecologist and had been one of two clinic physicians at Causeway. (Doc. 109 ¶ 13.)

62. Doe 4 obtained his license to practice medicine in Maryland in 1959 and in Louisiana in 1965. (Doc. 196 ¶ 54.) He served as an assistant professor or assistant instructor in obstetrics and gynecology for seventeen years at Earl K. Long Hospital. (Doc. 168 at 160.)

63. When Doe 4 maintained a full OB/GYN practice, he had admitting privileges at four hospitals in the Baton Rouge area. (*Id.* at 154.) 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 167.)

64. Doe 4 performed abortions at Causeway in Metairie until January 2016. (Doc. 109 ¶ 11; Doc. 255 ¶ 1.) He was not able to get admitting privileges at a hospital within 30 miles of Causeway. (Doc. 191 at 18:6-19; *see also, e.g.,* Doc. 168 at 164-165.)

(5) Doe 5

65.-67. No changes.

(6) Doe 6

68.-70. No changes.

D. Admitting Privileges in Louisiana

71.-94. No changes.

95. No changes, aside from the following:

Footnote 30: This testimony was objected to as hearsay, which objection was overruled. (Doc. 192 at 46:7-13.) 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. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987); *Sierra Club, Loan Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993); *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2949 (3d. 2015). Although the present opinion is no longer a preliminary injunction, by virtue of their agreement to convert the preliminary injunction to a permanent injunction on the existing record, Doc. 253, *see also* Fed. R. Civ. P. 65(a)(2), the parties have waived further evidentiary objections. Second, as this testimony was presented so as to explain Doe 1'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).

96.-112. No changes.

After paragraph 112, insert:[7]

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. Rev. Stat. § 40:1299.35.2. 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 infra* Parts VI-IX. Instead, the law relies on the highly variable requirements set in the bylaws of each hospital. *Id.*; *see also WWH* at 2312 (noting that hospitals often have "prerequisites to obtaining admitting privileges that have nothing to do with ability to perform medical procedures").

The Act therefore anticipates and relies upon existing private hospitals' varying bylaws' 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 bylaws 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. The inability of Does 1, 2, 4, 5 (in Baton Rouge), and 6 to get the kind of active admitting privileges which the Act itself mandates, *see supra* Part V.D (above), has been caused by Act 620 working in concert with existing laws and practices, as discussed in detail, *infra* Part IX.

As discussed in here and in Part IX, the Court finds that Louisiana's credentialing process and the criteria found in some hospital bylaws work to preclude or, at least greatly discourage, the granting of privileges to abortion providers, including the following:

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[7] *Plaintiffs note that these paragraphs are drawn in large part from the Court's Findings of Fact and Conclusions of Law on the preliminary injunction, Part XII(C).*

- 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;
- 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 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.

Indeed, the Court finds that, since Act 620 was enacted, these specific aspects of how Louisiana hospitals grant, deny, or withhold hospital admitting privileges, have played a significant contributing role in Louisiana's abortion providers not being given privileges or being given only limited privileges.

E. The Climate

113.-140. No changes.

VI. ACT 620

A. Text of Act 620 and Related Provisions

141.-149. No changes.

B. Louisiana's Policy and Other Legislation Regarding Abortion

150.-160. No changes.

After paragraph 160, insert:

Before the enactment of Act 620, Louisiana already had in force numerous laws and regulations covering abortion facilities, including requirements that facilities be inspected at least annually, *see, e.g.,* La. Rev. Stat. 40:1061 *et seq*. (redesignated from La. Rev. Stat. 40:1299 *et seq*.); La. Rev. Stat. 40:2175.1 *et seq*., and that they retain a readily accessible written protocol for managing medical emergencies and the transfer of patients requiring further emergency care to a hospital (i.e. a transfer agreement).[8] *See also generally* La. Admin. Code tit. 48, pt. I, §§ 4405, 4407(A).

C. Drafting of Act 620

161. Retain, with the following modifications:

Delete footnote 37.

162.-166. No changes.

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[8] Louisiana regulations had previously provided: "[A licensed abortion] facility shall ensure that when a patient is in the facility for an abortion, there is one physician present who has admitting privileges or has a written transfer agreement with a physician(s) who has admitting privileges at a local hospital within the same town or city to facilitate emergency care"). Former La. Admin. Code tit. 48, pt. I, § 4407(A)(3), *available at* 29 La. Reg. 706-07 (May 20, 2003). Shortly before trial, Defendant Kliebert repealed the prior regulation, and replaced it with an admitting privileges requirement identical to the Act. La. Admin. Code, tit. 48, pt I., § 4423(B)(3)(e), *available at* 41 La. Reg. 696 (Apr. 20. 2015).

D. Official Legislative History of Act 620

167.-175. No changes.

VII. CONSIDERATION AND PASSAGE OF ACT 620

176.-177. No changes.

178. Retain with the following modifications:

Delete 178(C) through (F).

Footnotes 39-43: Delete.

179. No changes, except change "Fifth Circuit" to "Supreme Court."

After paragraph 179, insert additional sections of findings:

[ ]. EXPERT TESTIMONY

Evidence concerning the safety of abortion was adduced largely through expert testimony, which was borne out by the experience of Louisiana abortion providers. The Court turns now to a discussion of its credibility findings concerning the parties' experts; the factual findings that stem from the experts' opinions follow.

The Court was impressed with the credibility and expertise of Plaintiffs' experts. Dr. Eva Pressman is the Chair of the Department of Obstetrics and Gynecology at the University of Rochester Medical Center, where she is in charge of a department of 50 faculty members. (Doc. 195 at 11:13-12:16.) Subsequent to her residency, and before coming to the University of Rochester, Dr. Pressman served as a professor and Director of Fetal Assessment at Johns Hopkins. (*Id.* at 13:13-14:10; PX 94, 131 ¶¶ 3-4.) At Johns Hopkins, Dr. Pressman had a surgical abortion practice, up to 24 weeks gestation. (*Id.* at 13:6-12.) Dr. Pressman has published in excess of 70 research articles in peer-reviewed medical journals and received more than 20 research grants,

including from the National Institutes of Health. (*Id.* at 14:11-15:5; *see generally* PX 94.) The Court accepted Dr. Pressman as an expert in public health, obstetrics, and abortion care. (*Id.* at 17:16-20:25.)

Dr. Christopher Estes is an OB/GYN with a master's degree in public health from Columbia University. (Doc. 190 at 186:8-189:10.) For seven years, he was a professor on the faculty of the University of Miami's Miller School of Medicine and an OB/GYN surgeon who performed, among other procedures, first and second trimester abortions, with a specialty in high-risk patients. (*Id.* at 189:16-191:8.) Dr. Estes is presently the Medical Director of Planned Parenthood of South, East, and North Florida, where he provides the full spectrum of family planning services and surgery. (*Id.* at 186:10-23, 192:8-193:12; *see generally* PX 92.) The Court accepted Dr. Estes as an expert in public health, obstetrics, and abortion care. (*Id.* at 194:7-196:23.)

Plaintiffs' expert medical witnesses are both experienced women's health practitioners, with extensive experience, research, and knowledge of peer-reviewed medical literature related to abortion. Both testified candidly on direct and cross-examination. (*Id.* at 197:1-268:6; Doc. 195 at 11:12-96:12.) While these physicians may have personal opinions about abortion and the Act, their expert testimony was not skewed by those opinions, was well-supported by reliable facts and data, and is fully credited by the Court as truthful and reliable.

Defendant presented expert testimony from Dr. Damon Cudihy and Dr. Robert Marier. The Court had serious concerns about the credibility and reliability of Dr. Cudihy's testimony. His testimony and opinions were shown to be contradicted by his own prior inconsistent statements and the sources on which he purported to rely. (*E.g.* Doc. 194 at 73:18-88:16 (opining that D&C, a miscarriage treatment comparable to early surgical abortion, should always be performed in a

hospital, but relying on sources stating "a D&C can be done in a healthcare provider's office, a surgery center, or a hospital" and "for uncomplicated cases curettage in an operating room adds to the costs and inconvenience yet offers no medical benefit over outpatient curettage"). He was evasive on the stand. (*E.g. id.* at 133:18-134:8, 134:16-135:12, 141:2-142:3, 161:20-162:9, 173:6-176:5.). His testimony also demonstrated a bias against legal abortion, which he described as "appalling, horrifying, tragic, and unnecessary," and which he testified should be criminalized. (*Id.* at 205:12-206:3.).

Further, Dr. Cudihy lacks relevant experience regarding the matters on which he offered opinions. He testified that he has never performed an abortion, nor has he studied the provision of abortion. (Doc. 194 at 21:16-21.) He has not treated a single abortion complication in the two years he has practiced medicine in Louisiana. (*Id.* at 73:25-74:8.) He conceded that several of his opinions about abortion relied on no sources at all, (*e.g. id.* at 100:15-106:10; 111:25-112:12), and that others were based on conversations with a non-testifying defense expert, Dr. John Thorp, (*id.* at 140:1-18), whose testimony has been discredited in other suits regarding abortion restrictions, *e.g. Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 968-69 (W.D. Wis. 2015), *aff'd*, 806 F. 3d 908 (7th Cir. 2015), *cert denied*, 136 S. Ct. 2545 (2016); *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1381, 1394 (M.D. Ala. 2014).

The Court accordingly gives Dr. Cudihy's testimony minimal weight. However, even if fully credited, Dr. Cudihy's testimony would not change the Court's findings of fact.

Dr. Marier was accepted by the Court as an expert in internal medicine, the regulation of physicians and other health care professionals in Louisiana, and hospital administration. (Doc. 193 at 9:24-10:23.) He was Chairman of the Department of Hospital Medicine at Ochsner Medical

Center and previously served as the Executive Director of the Louisiana State Board of Medical Examiners. (*Id.* at 4:16-9:21.)

Dr. Marier's testimony regarding hospital privileging was well within his area of experience and expertise, and the Court gives considerable weight to that testimony.

However, Dr. Marier's testimony regarding the purported benefits of Act 620 to abortion patients suffered from his paucity of knowledge or experience concerning medical or surgical abortion procedures. Dr. Marier has never performed an abortion and has not had any experience with obstetric or gynecological surgeries since medical school. (*Id.* at 51:14-25.)

Dr. Marier's testimony was also diminished by his bias, manifested in his testimony that abortion, and even contraception methods such as emergency contraception and intrauterine devices, should be outlawed in the United States. (*Id.* at 106:10-107:19, 27:9-18, 89:2-14, 94:1-19, 94:20-97:10, 99:12-100:16.)

The Court accordingly gives Dr. Marier's testimony regarding the purported benefits for Act 620 minimal weight. However, even if fully credited, this portion of Dr. Marier's testimony would not change the Court's findings of fact.

[ ]. ABORTION SAFETY

The Court makes the following findings regarding abortion safety based on expert and lay testimony, supported by the exhibits received in evidence.

Abortion is a common medical procedure in the United States, with nearly one million procedures performed each year. (Doc. 190 at 197:1-6, 232:7-13; JX 123 ¶ 24.) Approximately one in three women in the United States will have an abortion during their lifetimes. (*Id.* at 197:1-6; JX 123 ¶ 24.)

Abortion is one of the safest medical procedures in the United States. (Doc. 190 at 199:6-24; Doc. 195 at 32:7-10; JX 123 ¶ 24.) Dr. Marier acknowledged "that most first-trimester abortions are performed without serious complications." (JX 135 at 2804.) There is far more risk associated with carrying a pregnancy to term and delivering a baby than with abortion. (Doc. 190 at 129:22-130:5, 199:6-10; JX 123 ¶ 61; Doc. 195 at 32:4-10.)

Approximately 90% of abortion procedures occur in the first trimester, almost all of which are performed in an outpatient setting. (Doc. 190 at 197:7-15; JX 123 ¶ 13; Doc. 195 at 33:16-19.)

There are two types of abortion procedures, surgical abortion and medication abortion. (JX 123 ¶ 15.) Surgical abortion is a minimally invasive procedure that involves the use of instruments to evacuate the contents of the uterus, but does not require an incision or the use of general anesthesia. (Doc. 190 at 138:24-139:17; Doc. 195 at 32:11-20, 48:20-49:3; JX 123 ¶ 16.)

First trimester surgical abortions are nearly identical to D&Cs to complete a spontaneous miscarriage or for other diagnostic or therapeutic reasons. (JX 123 ¶ 19; Doc. 168 at 181.) Physicians are not required to have admitting privileges in order to perform D&Cs to complete a spontaneous miscarriage or for other diagnostic or therapeutic reasons in Louisiana. (Doc. 194 at 116:10-15.)

Virtually all surgical abortions require only mild or moderate sedation and/or local anesthesia. (Doc. 190 at 138:24-139:17.) Mild or moderate sedation and local anesthesia are much safer than the general anesthesia used in an operating room setting. (Doc. 190 at 197:24-198:12; Doc. 195 at 33:24-35:19; JX 123 ¶ 18; PX 185 ¶ 793.)

Complications from surgical abortion are rare and include infection, hemorrhage, retained tissue, incomplete abortion, and perforation of the uterus. (Doc. 190 at 36:21-37:25, 198:13-199:5.)

Most complications of surgical abortions can be managed in the clinic, including by administering medications that reduce bleeding or cause the uterus to contract, massaging the uterus, applying pressure, suturing, or administering oral antibiotics to treat infection. Surgical intervention is not commonly required. (Doc. 190 at 25:3-6, 89:15-90:1, 135:10-137:9, 201:15-207:22; Doc. 195 at 38:22-39:4.) Serious complications requiring transfer directly from the clinic to a hospital are extremely rare. (Doc. 190 at 39:25-40:5, 246:6-9.)

Medication abortion involves the use of a combination of two drugs, usually mifepristone and misoprostol. (Doc. 190 at 130:9-131:2; JX 123 ¶ 22.) Plaintiff clinics offer medication abortion up to eight weeks LMP. *See supra* Part V.B. A woman typically takes mifepristone at the clinic and then takes misoprostol at home. (Doc. 190 at 131:20-132:7, 208:23-209:15.) Medication abortion requires no anesthesia or sedation. (JX 123 ¶ 23.) Medication abortion is also used as a treatment option in connection with spontaneous abortion, also known as miscarriage. (Doc. 190 at 210:23-211:12.)

The most common complication from medication abortion is incomplete abortion or retained tissue, which is typically remedied by a return visit to the clinic for a suction curettage procedure. (Doc. 190 at 132:9-21, 209:16-210:16; Doc. 195 at 43:19-44:4.)

The prevalence of any complication in first trimester abortion in the outpatient setting is approximately 0.8%. The prevalence of major complications requiring treatment in a hospital is 0.05%. The risks of abortion remain low through the second trimester, but the risks increase with gestational age. The risk of complication requiring hospitalization in the second trimester is

approximately 1.0%. (Doc. 190 at 198:13-199:5, 199:11-24, 199:25-200: 9; JX 123 ¶ 25; Doc. 195 at 42:2-44:18, 75:14-76:5, 95:3-18; PX 195 at 499.)

By comparison, a D&C procedure performed after a miscarriage carries greater risk than a first trimester surgical abortion because, during a miscarriage, the cervix is already open, allowing the passage of bacteria into the uterine cavity, which increases the risk of infection. (Doc. 195 at 31:20-32:3, 35:21-36:2.)

Patients who visit the emergency room after an abortion often are experiencing normal side effects of the procedure and can be observed and released, or treated and released without admission. (Doc. 190 at 212:1-17; Doc. 195 at 37:20-39:4.)

It is more common for women to present at the emergency room with symptoms of miscarriage than with complications following an induced abortion. (Doc. 190 at 212:18-25.) Emergency room doctors are equipped to treat a patient who is experiencing complications from either. (Doc. 190 at 213:1-6, 213:18-22; Doc. 195 at 59:5-7.) When a complication from abortion requires surgical intervention in the hospital setting, emergency physicians stabilize the patient and facilitate treatment by the appropriate specialist. This is the standard of care. (Doc. 190 at 213:7-17, 249:8-250:21; Doc. 195 at 39:5-40:3, 55:14-56:12, 57:25-58:3; Doc. 193 at 52:21-53:1.) In Louisiana, it is not required by law nor is it standard practice for a physician to have admitting privileges in order to transfer a patient to another medical facility for emergency care: Doe 1, who previously worked as a rural emergency physician, routinely transferred patients with severe emergencies to other hospitals without admitting privileges. (Doc. 192 at 18:13-19:15.)

In the last 23 years, Hope Clinic, which serves in excess of 3,000 patients per year, has only had four patients requiring transfer to a hospital for treatment. (Doc. 190 at 25:14-18, 127:8-11.) In each instance, regardless of whether the physician had admitting privileges, the patient

received appropriate care. (*Id.* at 127:11-23, 128:5-14, 128:15-129:8, 172:13-173:5, 129:9-21.) At Hope Clinic, if a physician determines that a patient needs to be transported to the hospital, he directs an employee to call for emergency transport. The administrator ensures that the chart is complete so that a copy can be sent to the hospital. The physician also contacts the hospital to alert the attending physician that the patient will be arriving and to provide information about the complication. (Doc. 190 at 25:19-26:14.)

From 2009 through mid-2014, approximately 4,171 abortions were performed at Bossier Clinic, and only two patients required direct hospital transfer following an abortion. (JX 117 ¶ 9.)

In the same period, approximately 10,836 abortions were performed at Causeway Clinic, and only one patient required direct hospital transfer after an abortion. (JX 117 ¶ 9.)

Dr. John Doe 2, who has performed 30,000 to 40,000 abortions since 1980, has had no more than twenty patients who required hospitalization. (Doc. 191 at 46:12-21.)

From 2009 through mid-2014, Dr. John Doe 2 directly cared for approximately 6,000 patients who received abortions. Only two of these patients experienced complications requiring direct hospital transfer. (JX 187 ¶ 6.) In both of those situations, he spoke with the hospital doctor who took over care when the patient was admitted to the hospital. Both of these patients received appropriate care. (Doc. 191 at 43:14-45:10, 45:11-46:11.) He has never sent a patient to another institution without calling the doctor taking over care for the patient and sending all available written patient medical records to that doctor. (*Id.* at 42:20-43:13.)

Dr. John Doe 5 has performed thousands of abortions at Women's Clinic and Delta Clinic in the past three years and has never had to transfer a patient to the hospital. (JX 110 ¶ 7.)

Dr. John Doe 6 has performed thousands of surgical and medical abortions over more than the past ten years and only two of those patients required a direct transfer to the hospital. (JX 168 ¶ 8.)

In sum, the testimony of clinic staff and physicians demonstrated just how rarely it is necessary to transfer patients to a hospital: far less than once a year, or less than one per several thousand patients. Louisiana physicians, even were they able to obtain admitting privileges, would rarely if ever have an occasion to use them, and would never need to, given that they are not required to admit patients to a hospital in the extremely unlikely event that a patient needs hospital transfer.

When women do not have access to safe abortion, because abortion is expensive or difficult to obtain, they may be forced to delay and seek an abortion at a later gestational age, which increases the risks of the procedure. (Doc. 190 at 200:20-201:6, 223:19-224:8; JX 123 ¶ 60.) Women may also resort to trying to self-induce abortions, seek unsafe abortions, or obtain medications through the internet, which can carry significant risk of death, complications, or poor health outcomes. Women without financial resources are at the greatest risk of these consequences. (Doc. 190 at 224:9-225:3; JX 123 ¶¶ 60, 62.)

[ ] REQUIRING ABORTION PRACTITIONERS TO OBTAIN ADMITTING PRIVILEGES CONFERS NO MEDICAL BENEFIT

The Act's requirement that abortion providers have active admitting privileges at a hospital within 30 miles does not conform to prevailing medical standards and will not improve the safety of abortion in Louisiana. (Doc. 190 at 214:3-13, 225:4-6.) It provides no benefits to women and is an inapt remedy for a problem that does not exist. (*Id.* at 222:13-16; Doc. 195 at 26:5-16, 28:13-20; Doc. 168 at 317-318.)

Defendant did not introduce any evidence showing that patients have better outcomes when their physicians have admitting privileges. Nor did Defendant proffer evidence of any instance in which an admitting privileges requirement would have helped even one woman obtain better treatment.

Admitting privileges requirements such as the Act's are opposed by the medical community. Specifically, the American College of Obstetricians and Gynecologists ("ACOG") and the American Medical Association ("AMA") are opposed to these admitting privileges requirements. (PX 142; JX 136; Doc. 190 at 215:4-15); *see also WWH*, 136 S. Ct. at 2312-13. Both ACOG and the AMA have taken the position that "there is simply no medical basis to impose a local admitting privileges requirement on abortion providers," and that such requirements are "out of step with modern medical practice, which contemplates provision of emergency care by specially trained hospital physicians at a hospital near the patient's residence." (PX 142 at 98, 104); *see also WWH*, 136 S. Ct. at 2312.

Whether or not a patient's treating physician has admitting privileges is not relevant to the patient's care. Patients who present to the emergency room do not receive a lesser standard of care because their treating physician did not have admitting privileges. (Doc. 190 at 221:1-14.)

If a patient needs to be admitted to the hospital for care, the patient can present to the emergency room and will be admitted to the hospital. A hospital cannot turn away a patient experiencing an emergency because it is unethical and would be a violation of federal law. (Doc. 190 at 221:1-8); 42 U.S.C. § 1395dd (2011).

It is routine for emergency room doctors to assess patients, many of whom are experiencing the stress of injury, illness, or trauma. Patients, even when in significant levels of distress, are able to give emergency room doctors pertinent medical history. (Doc. 190 at 260:6-261:15, 265:2-20.)

If a patient needs emergency surgery, the patient will be treated by the specialist on call who is best qualified to perform the type of surgery needed. (*Id.* at 220:11-25; Doc. 191 at 15:16-16:2; Doc. 195 at 28:21-29:17.)

Admitting privileges are not necessary for continuity of care. In the medical community, continuity of care is understood to mean that if a physician is not able to continue providing care to a patient, the physician will make certain that another physician has the information needed to care for the patient. Continuity of care can be accomplished by communicating with the physician to whom the patient's care is being turned over. For example, physicians within an OB/GYN practice routinely care for each other's patients, including deliveries. (Doc. 190 at 124:15-125:12; Doc. 191 at 40:24-41:19.) And, as Dr. Doe 2 testified, on the rare occasions when he transferred a patient to the hospital, he communicated directly with the physician assuming care and provided the patient's records. (Doc. 191 at 42:20-43:13.)

Many physicians who practice in office settings are able to ensure continuity of care for their patients without having admitting privileges. (Doc. 190 at 216:8-21; Doc. 195 at 28:21-30:10.)

Indeed, the normal practice of medicine involves physicians handing patients off from one shift to the next, from an office-based setting to an emergency room, and from an emergency room to an in-patient ward. (Doc. 190 at 218:1-8; Doc. 195 at 79:1-6.) When physicians rely on other physicians to assist in caring for their patients, it is not considered patient abandonment. (Doc. 168 at 305.) A physician's transfer agreement with another physician, which all abortion clinics must maintain under pre-existing law, is a mechanism to ensure continuity of care. (Doc. 168 at 227, 263, 316.) Continuity of care for a patient is often maintained even without formal measures like transfer agreements. (Doc. At 190 241:13-23, 242:19-243:1.)

Most complications from surgical abortion do not occur immediately at the clinic, which is why transfer directly to a hospital is so very rare. (*See generally* Doc. 190 at 90:23-91:15.) If a patient experiences a complication after she leaves the clinic, the clinic will advise her to go to the hospital closest to her, which is not necessarily a hospital within 30 miles of the clinic. (Doc. 190 at 90:23-91:15, 126:17-127:7; JX 159 at 3491; JX 162 at 3504; JX 165.) This is the standard of care. (Doc. 190 at 222:1-12.)

In conclusion, there is no credible evidence in the record that Act 620 would further the State's interest in women's health beyond that which is already insured under existing Louisiana law. Indeed, the overwhelming weight of the evidence demonstrates that, in the decades before the Act's passage, abortion in Louisiana has been extremely safe, with particularly low rates of serious complications, and as compared with childbirth and with medical procedures that are far less regulated than abortion. *Accord WWH*, 136 at 2320-21.

In the preliminary injunction order, the Court refrained from making a finding as to whether Act 620 serves the State's purported interest in women's health because it was limited by then-prevailing Fifth Circuit precedent. In light of *WWH*, the Court now assesses the relevant evidence and resolves as a factual matter that Act 620 would do nothing to advance women's health and indeed would substantially harm women's health.

VIII. EFFORTS OF DOCTORS TO COMPLY WITH ACT 620 AND THE RESULTS OF THOSE EFFORTS

A. Doe 1

180.-205. No changes.

B. Doe 2

206. Currently, Doe 2 performs abortions at Bossier Clinic, and through January 30, 2016, also performed abortions at Causeway Clinic. (Doc. 191 at 17:5-9; Doc. 255 ¶ 1.)

207.-218. No changes.

219. Because of the nature of his non-hospital based practice, Doe 2 was unable to provide the requested information. (*See, e.g.,* Doc. 191 at 29:8-31:1.) Thus, while Defendant is correct that Doe 2's application was not formally denied (Doc. 201 at 11), Doe 2's application would never have been approved according to WKP's own letter. (JX 89; *see also, e.g.*, JX 144 at 3445-46.)

220.-223. No changes.

224. Because Doe 2 also practiced at Causeway Clinic in Metairie, he applied for admitting privileges at Tulane, which is within 30 miles of Causeway. (*See, e.g.*, Doc. 191 at 32:24-35:21, 230:9-19; JX 180 at 3359.)

225.-249. No changes.

C. Doe 3

250.-255. No changes.

D. Doe 4

256. Doe 4 performed abortions at Causeway Clinic in Metairie. (*See, e.g.* JX 114 ¶ 1; Doc. 169 at 156.)

257.-260. No changes.

261. Ochsner requested additional information, which Doe 4 provided. (JX 98 at 2118; JX 60 at 824), but he did not receive a response over the subsequent year prior to the closure of Causeway Clinic. (Doc. 240.)

262.-263. No changes.

E. Doe 5

264.-272. No changes.

F. Doe 6

273.-281. No changes.

G. Post-Hearing Updates

282.-284. No changes.

After paragraph 284, insert:

Since the issuance of the preliminary injunction on January 26, 2016, the Plaintiffs advised the Court that, after making inquiries, they are unaware of any material changes in the status of the applications of Does 1, 2, 4, 5 and 6, beyond the fact the Doe 4 is no longer pursuing privileges due to the closure of Causeway clinic. (Doc. 249; Doc. 255 ¶¶ 2-3.)

IX. EFFECTS OF ACT 620

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

285. No changes, aside from the following:

Footnote 52: delete

286.-292. No changes.

293. No changes, aside from the following:

Footnote 54: delete

294.-301. No changes.

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. The privileges Doe 2 obtained at Tulane in an attempt to be able to provide abortions at Causeway Clinic prior to its closure, were limited such that they did not comply with Act.
- If Act 620 takes effect, Doe 3, who does not have admitting privileges pursuant to the Act within 30 miles of Hope, will no longer provide abortions in Louisiana because of a well-founded concern for his personal safety.
- If Act 620 takes effect, Doe 4 would not be able to provide abortions in Louisiana because he could not obtain admitting privileges pursuant to the Act, based on his unsuccessful efforts to do so prior to the closure of Causeway Clinic.
- 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 Doe 5 will be the only physician available to provide abortion care in southern Louisiana, and in all likelihood, the only physician available to provide abortion care in the entire state.

- 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.-304. No changes.

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

305. If Act 620 were to be enforced, three of the five doctors currently providing abortions in Louisiana – Does 1, 2, and 6 - would not meet the admitting privileges requirement. 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 abortion in this state. A single remaining physician providing abortion services in Louisiana cannot meet the level of services needed in the state. The Court finds that this one physician will not be able to perform 10,000 procedures per year. (Doc. 168 at 183; DX 148 ¶ 11.)

Footnote 57: Delete.

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

307.-308. No changes.

309. Delete.

310. Even if one were to conclude that Doe 3 will not quit or that his quitting is legally irrelevant, Act 620 will nonetheless result in a substantial number of Louisiana women being unable to obtain an abortion in this state. Just the loss of Doe 1 at Hope would be, according to Pittman, Hope's administrator, "devastating" to its operations and viability. (Doc. 190 at 29:15-21.)

311. Doe 3 sees about 20 to 30 abortion patients per week, or roughly 1,000 to 1,500 per year. (*Id.* at 118:1-4.) This would leave roughly 5,500 Louisiana women seeking an abortion (or 55%) without the ability to get one.

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, Causeway closed in January 2016. Doe 2 continues to provide abortions at Bossier City but would not be permitted to do so were Act 620 to go into full effect.

313. Delete.

314. Hope and Women's, the two clinics that would remain, assuming Doe 3 did not quit or that his quitting was (incorrectly, in this Court's view) determined to be insufficiently related to Act 620, 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 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. If, as Defendant argues, Doe 3's quitting is legally irrelevant, Baton Rouge and Bossier City would be left with no facility, Shreveport with one (Hope) and New Orleans with one (Woman's). But

both remaining facilities would have only half the previous number of providers. Doe 3 and Doe 5 cannot possibly meet the demand of 10,000 abortion patients in Louisiana each year.

After paragraph 315, insert:

Although the court did not receive additional evidence beyond the stipulation of the parties regarding the closure of Causeway Clinic, and therefore draws no inferences regarding the cause of the closure, the fact that women seeking abortions now have one fewer clinic available, does not change, and, if anything, further supports the Court's findings regarding the impact of Act 620 on access. Common sense dictates that the result of one less clinic will be greater demand on the remaining clinics, thus amplifying the impact of any change that will result in additional closures or fewer physicians providing abortions. It is plain that Act 620 would result in the closure of clinics, fewer physicians, longer waiting times for appointments, and increased crowding.

Defendant offered no evidence to rebut Plaintiffs' evidence of the drastically diminished capacity for abortion services in Louisiana should Act 620 go into effect.

316.-319. No changes.

After paragraph 319, insert:

The hostile environment against abortion providers in Louisiana and nationally is another factor making recruiting difficult. (Doc. 190 at 22:17-25:2; JX 110 ¶¶ 16, 23 n.1; JX 109 ¶ 14.) This includes harassment and violence towards abortion providers, including the murders of eight abortion providers across the country. (*Id.* at 22:20-23:12, 23:21-24:1, 87:9-11.) As one of the physicians noted, in light of "the hostile environment in Louisiana towards abortion providers and

the extreme harassment and intimidation by anti-abortion activists, most doctors are simply too afraid." (JX 110 ¶ 16.)

320. No changes, aside from the following:

Footnote 60: Delete.

321. No changes.

After paragraph 321, insert:

C. The Real-World Effect of Act 620 on Louisiana Women

All women seeking an abortion in Louisiana would face greater obstacles than they do at present were Act 620 to be fully implemented, due to the dramatic reduction in the number of providers and the overall capacity for services, especially given the context in which this Act will operate. In addition, the clinic closures that will result from the Act's enforcement will have additional, acute effects for several significant subgroups of women of reproductive age in Louisiana.

There would be no physician in Louisiana providing abortions between 17 and 22 weeks gestation. Women seeking abortion at this stage of their pregnancies would be denied all access to abortion in Louisiana and will be unable to exercise their constitutional right.

The heaviest burdens of Act 620 would fall disproportionately upon poor women. To illuminate these burdens, the Court credits Dr. Sheila Katz, an Associate Professor of Sociology at the University of Houston, as an expert in the sociology of gender and the sociology of poverty. (Doc. 191 at 110:11-114:12, 123:23-126:4.) Dr. Katz's academic scholarship is focused on qualitative research on low-income women's lived experiences with poverty. (*Id.* at 110:25-115:21.)

Louisiana is one of the poorest states in the country, with the nation's third-highest levels of overall and child poverty. Twenty-six parishes are classified by the U.S. Department of Agriculture as persistently poor. (*Id.* at 128:5-8, 130:14-131:3, 131:25-132:4, 133:8-136:3; JX 124 ¶¶ 7, 9, 10; PX 166; PX 167.) Approximately 230,000 Louisiana women of childbearing age live below the federal poverty line. (*Id.* at 135:15-17.)

Women who seek abortion in Louisiana come from all socioeconomic and ethnic backgrounds (Doc. 190 at 18:17-23; Doc. 191 at 19:12-20:4) but are disproportionately poor. (Doc. 191 at 191:23-192:9; JX 124 ¶¶ 8, 13, 14.) Approximately 42% of women having abortions in the U.S. in 2008 subsisted at or below the federal poverty line, and another 27% had incomes at or below 200% of the poverty line. Given the high rate of poverty, in Louisiana these figures are likely to be much higher. Few women seeking an abortion in Louisiana have medical insurance that covers the procedure. (Doc. 190 at 20:11-21:5.) In some instances, poor women must choose between paying for an abortion and paying for other basic necessities, such as rent. (*Id.* at 18:17-19:14, 34:6-23, 89:9-14; Doc. 191 at 135: 5-14, 158:10-23; JX 116 ¶ 14.) Nearly 75% of women who obtain abortions in Louisiana already have one or more children, which is higher than the national average. (Doc. 190 at 94:7-12; Doc. 191 at 152:20-153:2; JX 192 at 3673.)

The Court also finds that, with just one or two providers remaining, many more women will be forced to travel significant distances to reach a clinic, which also imposes a substantial burden.

Many Louisiana women have difficulty affording or arranging for transportation and childcare on the days of their clinic visits, in addition to the challenge of affording the abortion itself. (Doc. 190 at 18:17-19:14; Doc. 191 at 142:25-143:22, 145:19-146:1.) Increased travel distance to clinics exacerbates the difficulty of securing transportation. (Doc. 191 at 20:17-24.)

This will be particularly burdensome for women living in northern Louisiana, who will face substantially increased travel distances to reach an abortion provider in New Orleans, either because Doe 3 stops providing and Hope Clinic closes, or the clinic remains open with very limited capacity. For example, many or all women in Shreveport or Bossier City who once could access a clinic in their own area will now have to travel approximately 320 miles to New Orleans.

Due to the 24-hour notification and waiting period, patients must make two trips to the clinic: the first to receive the ultrasound and state-mandated counseling and the second to obtain an abortion. (JX 109 ¶ 19.) Women who must travel increased distances to access abortion will in many cases have to take at least two days off from work, which has financial costs if the time off is unpaid, as is often the case in low-wage jobs. (Doc. 191 at 149:18-50:3; JX 124 ¶ 30.) Many women are even at risk of losing their jobs for taking time off. (*Id.* at 150:4-17; JX 124 ¶ 31.)

Intercity travel for low-income women presents a number of significant hurdles, including the logistics and cost of transportation, the costs associated with time off from work, and childcare costs. (JX 124 ¶¶ 16, 17.) Low-income women are likely to live in households that have no vehicles. (Doc. 191 at 142:15-24; 146:2-10.) Even under current law, patients frequently call to reschedule appointments due to transportation and childcare issues, thus delaying their access to abortion. (Doc. 190 at 17:20-20:8.)

Women who cannot afford to pay the costs associated with travel, childcare, and time off from work may have to make sacrifices in other areas like food or rent expenses, rely on predatory lenders, or borrow money from family members or abusive partners or ex-partners, sacrificing their financial and personal security. (Doc. 191 at 158:10-159:23; JX 124 ¶¶ 37-38.) Travel to a different city to seek a medical procedure also imposes significant socio-psychological hurdles on low income women. (*Id.* at 160:16- 161:3; JX 124 ¶¶ 16, 17, 35.)

Based on all of the evidence, the Court makes the common-sense inference that those women who can access an abortion clinic will face lengthy delays, pushing them to later gestational ages with associated increased risks. Those who would be candidates for medication abortion would have difficulty obtaining an appointment before that method becomes unavailable because of later gestational age; many women toward the end of the first trimester would have difficulty obtaining an appointment before they reach 16 weeks. Women past 16 weeks LMP will be left without any provider at all. As the Supreme Court has recognized, patients seeking services at overtaxed facilities are "less likely to get the kind of individualized attention, serious conversation, and emotional support that doctors at less taxed facilities may have offered." *WWH*, 136 S. Ct. at 2318. Facilities "attempting to accommodate sudden, vastly increased demand . . . may find that quality of care declines." *Id.* (citation omitted). Women have the right not to be forced to "travel long distances to get abortions in crammed-to-capacity superfacilities," "in the face of no threat to [their] health." *Id.*

In short, Act 620 would do little or nothing for women's health, but rather would strew impediments to abortion, with especially high barriers set before poor, rural, and disadvantaged women. The burdens imposed by Act 620 on abortion outweigh the benefits, particularly given this Court's finding that the Act would harm rather than promote women's health.

CONCLUSIONS OF LAW

Plaintiffs offer the following proposed revised conclusions of law for the Court's consideration. They are re-drafted to reflect the application of the standard clarified by the Supreme Court in Whole Woman's Health*, and to take into account the additional findings of fact that have been proposed above.*

X. SUMMARY OF LEGAL ARGUMENTS

1. Plaintiffs challenge Act 620 as unconstitutional as a violation of *Casey* and *WWH*. They argue that Act 620 imposes substantial obstacles to Louisiana women in accessing abortion, without offering any countervailing health benefits. Act 620 places an undue burden on a woman's right to choose abortion, they assert, because the admitting privileges requirement fails to confer any health benefit, but has dramatic implications for the availability of abortion in the state. Given this imbalance, Plaintiffs urge this Court to declare Act 620 unconstitutional in all of its applications and enter a permanent injunction against its enforcement.

2. Defendant argues that Plaintiffs have failed to establish that Act 620 imposes an undue burden on women seeking abortion in Louisiana.

XI. TEST FOR DETERMINING THE CONSTITUTIONALITY OF ACT 620

3. "[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." *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 453 (5th Cir. 2014) (citing *Roe*, 410 U.S. at 153). A state may enact regulations "to foster the health of a woman seeking abortion" or "to further the State's interest in fetal life," provided that these regulations do not impose an "undue burden" on the woman's decision. *Casey*, 505 U.S. at 877-78 (plurality opinion). "A finding of an undue burden is

shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Id.* at 877.

4. "[A] statute which, while furthering [a] valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends." *Id.*; *WWH*, 136 S. Ct. at 2309. "Moreover, '[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle in the path of a woman seeking abortion impose an undue burden on the right.'" *WWH*, 136 S. Ct. at 2300 (quoting *Casey*, 505 U.S. at 878).

5. "The rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer." *WWH*, 136 S. Ct. at 2309 (citing *Casey*, 505 U.S. at 887). This balancing of benefits and burdens is central to addressing the question of whether "any burden imposed on abortion access is 'undue.'" *Id.* at 2310.

6. When evaluating the constitutionality of laws regulating abortion and conducting this balancing, courts must "place[] considerable weight upon evidence and argument presented in judicial proceedings," rather than leaving questions of medical uncertainty to the legislature to resolve. *Id.* at 2310. The courts have an "independent constitutional duty to review factual findings where constitutional rights are at stake." *Id.* (quoting *Gonzales v. Carhart*, 550 U.S. 124, 165 (2007)) (affirming that the district court correctly placed "significant weight" on the evidence in the record, and properly "weighed the asserted benefits against the burdens," in striking down Texas's admitting privileges requirement).

7. In assessing the burdens imposed by a restriction, courts must consider not only the impact of the law with respect to closure of clinics and reduction in the number of available

providers in the state, but also the "additional burden[s]" imposed on women by reducing abortion access, including longer wait times, increased crowding, and longer travel distances. *Id.* at 2313. Additionally, "[c]ourts are free to base their findings on commonsense inferences drawn from the evidence." *Id.* at 2317 (accepting the district court's "commonsense inference" that closing four-fifths of the abortion clinics in a state would render the remaining fifth unable to meet demand).

8. In *WWH*, for example, the Supreme Court evaluated the constitutionality of Texas's admitting privileges restriction by carefully reviewing the evidence in the record and the District Court's findings on its benefits and burdens. The Court noted that prior to passage of the admitting privileges requirement, abortion clinics in Texas were already required "to meet a host of health and safety requirements," *id.* at 2314, and concluded that "[w]e have found nothing in Texas' record evidence that shows that, compared to prior law (which, required a 'working arrangement' with a doctor with admitting privileges), the new law advanced Texas' legitimate interest in protecting women's health." *Id.* at 2311.

9. Turning to the burdens, the Supreme Court clarified that no single factor is determinative as to whether a restriction imposes an undue burden, but rather the burdens' impact must be evaluated cumulatively, and are undue if unjustified by the law's purported benefits; it explained:

> In our view, the record contains sufficient evidence that the admitting-privileges requirement led to the closure of half of Texas' clinics, or thereabouts. Those closures meant fewer doctors, longer waiting times, and increased crowding. Record evidence also supports the finding that after the admitting-privileges provision went into effect, the "number of women of reproductive age living in a county . . . more than 150 miles from a provider increased from approximately 86,000 to 400,000 . . . and the number of women living in a county more than 200 miles from a provider from approximately 10,000 to 290,000." We recognize that increased driving distances do not always constitute an "undue burden." But here, those increases are but one additional burden, which, when taken together with others that the closings brought about, and when viewed in light of the virtual absence of any health benefit, lead us to conclude that the record adequately

supports the District Court's "undue burden" conclusion.

Id. at 2313 (citations omitted).

10. The Court concluded that Texas's admitting privileges requirement (alone and in combination with another challenged law requiring abortion clinics to comply with regulations applicable to ambulatory surgical facilities) "vastly increase[d] the obstacles confronting women seeking abortions in Texas" in a variety of ways. *Id.* at 2319. The requirement decreased the number and geographic locations of legal abortion providers, thereby increasing the distances that women would need to travel to access care, delaying that care, forcing women to seek care in facilities that are overtaxed and pushed beyond their capacity, and preventing some women from accessing abortion care at all. *See id.* at 2313, 2315-18. Because these burdens vastly outweighed the "virtual absence" of any benefits, the Court held both requirements unconstitutional under *Casey*. *See id*. at 2313.

XII. ANALYSIS

11. In light of *WWH*, the Court has made additional findings of fact. Under the Supreme Court's current guidance, this Court has found that Act 620 does not confer health benefits for women seeking abortions, and that enforcement of the Act will undermine women's health. *See supra* at Part [ ] [pages 25-28].

12. Having now weighed the evidence of the substantial burdens imposed by Act 620, and their cumulative impact on abortion services in the state, as well as the evidence regarding the Act's lack of health benefits, the Court again finds that Act 620 places an unconstitutional undue burden on women seeking abortion in Louisiana.

A. Act 620 Does Not Protect Women's Health

13. Based on the evidence admitted to the record, the facts found herein, and all reasonable inferences drawn from those facts, the Court concludes that the admitting privileges requirement does not provide any health benefits to women. As in *WWH*, Defendant has presented no evidence showing that, compared to prior law, Act 620 advances the state's interest in protecting women's health and safety. *WWH*, 136 S. Ct. at 2311.

14. As explained *supra*, Part [ ] [pages 20-25], abortion in the state of Louisiana is safe, with extremely low rates of complication.[9]

15. As the Supreme Court explained with regard to the nearly-identical Texas statute, there "was no significant health-related problem that the new law helped to cure." *WWH*, 136 S. Ct. at 2311. The record does not contain any evidence that complications from abortion were being treated improperly, nor any evidence that any negative outcomes could have been avoided if the abortion provider had admitting privileges at a local hospital.

16. In short, this Court concludes that Act 620 will not further the State's asserted interest in the health of women seeking abortions as admitting privileges do not improve health outcomes in the event of complications. This conclusion is consistent with the Supreme Court's conclusion in *WWH* and the conclusions of other federal district courts that have considered the health benefits of similar admitting privileges laws. *WWH*, 136 S. Ct. 2311-12 (citing *Planned Parenthood of Wis., Inc. v. Van Hollen* ("*Van Hollen*"), 94 F. Supp. 3d 949, 953 (W.D. Wis. 2015*), aff'd sub nom. Planned Parenthood of Wis., Inc. v. Schimel* ("*Schimel*"), 806 F.3d 908 (7th Cir.

[9] There is broad consensus for this proposition among federal courts analyzing admitting privileges restrictions. *See WWH*, 136 S. Ct. at 2311-12; *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 953 (W.D. Wis. 2015*), aff'd sub nom. Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 3545 (2016); *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1378 (M.D. Ala. 2014).

2015), *cert. denied*, 136 S. Ct. 3545 (2016); *Planned Parenthood Se., Inc. v. Strange* ("*Strange*"), 33 F. Supp. 3d 1330, 1378 (M.D. Ala. 2014).).

17. Admitting privileges also do not serve "any relevant credentialing function," *WWH*, 136 S. Ct. at 2313, *see supra* Parts V.D, IX. The Louisiana State Board of Medical Examiners ensures physician competency through licensing and discipline. Hospitals grant privileges to physicians to promote the smooth functioning of the hospital, or to serve other goals or priorities of the particular hospital. Physicians are denied privileges, explicitly or de facto, for reasons unrelated to competency.

18. In summary, the record in this case demonstrates that Act 620 does not advance Louisiana's legitimate interest in protecting the health of women seeking abortions. Instead, Act 620 would harm women's health by dramatically reducing the availability of safe abortion in Louisiana. *See supra* Parts [ ] [pages 25-28], IX. Under *WWH* and in light of the medical evidence in the record in this case, the Court holds that Act 620 is not medically necessary and fails to actually further women's health and safety. While the Court is able to reach this conclusion based on the medical evidence alone, the findings of fact related to the legislative history of the Act, and the circumstances of its passage, *see supra* Parts VI.D, VII, provide additional support.

B. The Burdens Imposed by Act 620

19. Turning to the burdens imposed by Act 620, the Court finds that the Act places substantial obstacles in the path of a woman's choice to seek an abortion. Act 620 will result in a drastic reduction in the number and geographic distribution of abortion providers, reducing the number of clinics to one, or at most two, and leaving only one, or at most two, physicians providing abortions. *See supra* Part IX.

20. Currently, about 10,000 women per year seek abortions in the state. Plaintiffs have shown that, should the Act take effect, there will be just one physician left, Dr. John Doe 5, providing abortions in the state. Working four to five days per week, he is able to provide fewer than 3,000 abortions per year. Even working an implausible seven-day week, it would be impossible for him to expand his practice to meet even half the state's need for abortion services.

21. Even if Doe 3 continued to provide at Hope in Shreveport—which is not consistent with this Court's factual findings that Doe 3 is unlikely to continue to provide, and in any event the loss of Doe 1 would likely not allow his clinic to remain open—the demand for services would vastly exceed the supply.

22. Viewing all of the evidence together, the Court concludes that the remaining abortion providers—whether one facility or two—would not be able to meet the demand for abortion services in Louisiana. If allowed to take effect, Act 620 would therefore cripple women's ability to have an abortion in Louisiana.

23. In addition to these practical concerns and difficulties of increased risk of complications caused by delays in care, the reduction in availability of abortion would lead to an increase in self-performed, unlicensed and unsafe abortions. (Doc. 190 at 223–24.)

24. For these reasons, the Court concludes that Act 620 would have a negative impact on women's health.

25. Act 620 would also substantially increase the burden on women who are able to receive licensed, safe abortions. As discussed *supra* in Part IX, many women will have to travel extreme distances to reach the few providers who will continue to provide abortions, and that travel will impose severe burdens, which will fall most heavily on low-income women.

26. The result of these burdens on women and providers, taken together and in context, is that many women seeking a safe, legal abortion in Louisiana will be unable to obtain one. Those who can will face substantial obstacles in exercising their constitutional right to choose abortion due to the dramatic reduction in abortion services.

C. The Burdens Imposed by Act 620 Vastly Outweigh its Benefits

27. *WWH* "requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer." *WWH*, 136 S. Ct. at 2309 (citing *Casey*, 505 U.S., at 887-898). The record is devoid of any evidence that the Act will have a measurable benefit to women's health, but it is clear that the Act will drastically burden women's right to choose abortion. The Supreme Court found that "when taken together . . . , and when viewed in light of the virtual absence of any health benefit," the burden created by the nearly-identical Texas admitting privileges requirement was undue. *WWH*, 136 S. Ct. at 2313. As in *WWH*, Act 620 "does not benefit patients and is not necessary." *Id.* at 2315. Even if Act 620 could be said to further women's health to some marginal degree, the burdens it imposes far outweigh any such benefit, and thus the Act imposes an unconstitutional undue burden.

28. This result is consistent with the decision in *WWH* as well as other decisions addressing similar or identical admitting privileges requirements.[10] Indeed, there is no legally significant distinction between this case and *WWH*: Act 620 was modeled after the Texas admitting privileges requirement, and it functions in the same manner, imposing tremendous obstacles to abortion access with no countervailing benefits. The Court is bound by the Supreme Court's clear guidance to reach the same result and strike down the Act.

[10] *WWH*, 136 S. Ct. at 2313; *Van Hollen*, 94 F.Supp.3d 949 (W.D. Wis. 2015); *Strange,* 33 F.Supp.3d 1330 (M.D. Ala. 2014).

CONCLUSIONS

"The party seeking a permanent injunction must . . . establish (1) success on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the injunction will not disserve the public interest." *VRC LLC v. City of Dallas*, 460 F.3d 607, 611 (5th Cir. 2006)

For the reasons outlined above, the Court finds that Act 620 is unconstitutional on its face under *Casey* and *WWH*. The Act would create substantial obstacles for women seeking abortion in Louisiana without providing any demonstrated benefit to women's health or safety. Any marginal health benefits would be dramatically outweighed by the obstacles the restriction erects to women's access to their constitutional right to abortion. The Act therefore cannot withstand the scrutiny mandated by *WWH*. Plaintiffs have succeeded on the merits of their constitutional claim that the Act violates the Fourteenth Amendment.

Given that the Act violates women's constitutional right to abortion, Plaintiffs have established that irreparable injury will result in the absence of an injunction barring its enforcement. *See Deerfield Med. Ctr. v. Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (finding that the conclusion that the right to abortion is "'either threatened or in fact being impaired' . . . mandates a finding of irreparable injury") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further, some women's total inability to access abortion care, and unreasonable and dangerous delays experienced by others in scheduling an abortion procedure, will constitute irreparable harm for Louisiana women seeking abortions. *See WWH*, 136 S. Ct. at 2312-13; *Jackson Women's Health Org. v. Currier*, 940 F. Supp. 2d 416, 424 (S.D. Miss. 2013) (finding that clinic closure constitutes irreparable harm), *aff'd*, 760 F.3d 448 (5th Cir. 2014) *cert. denied*, 136 S. Ct. 2536 (2016). Many women will also face irreparable harms from the burdens associated

with increased travel distances and costs in reaching an abortion clinic. *See WWH*, 136 S. Ct. at 2313. These harms outweigh any damage to the State by the entry of an injunction.

Given the substantial injury threatened by enforcement of the Act, a permanent injunction will serve the public interest. *See 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 Nobby Lobby, Inc. v. Dallas*, 970 F.2d 82, 93 (5th Cir. 1992) ("the public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve") (citation omitted). The Court will therefore enter an order permanently enjoining the enforcement of the Act.

An order permanently enjoining enforcement of Act 620 in all of its applications is the appropriate remedy. As with the Texas abortion restrictions enjoined in all their applications by the decision in *WWH*, Act 620 would close most of the abortion facilities in Louisiana and "place added stress on those facilities able to remain open." *WWH*, 136 S. Ct. at 2319. Act 620 "vastly increase[s] the obstacles confronting women seeking abortions" in Louisiana "without providing any benefit to women's health capable of withstanding any meaningful scrutiny." *Id.* Therefore, Act 620 is unconstitutional on its face. Pursuant to this Court's authority under 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, this Court will enter orders declaring Act 620 unconstitutional and permanently enjoining the Act in all of its applications.

PROPOSED ORDER

In light of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED THAT:

1. The active admitting privileges requirement of LA R.S. § 40:1299.35.2 (Act 620) is DECLARED unconstitutional as a violation of the Fourteenth Amendment to the United States Constitution;
2. A PERMANENT INJUNCTION is ENTERED barring enforcement of LA R.S. § 40:1299.35.2 (Act 620);
3. Any implementing regulations of Act 620, including La. Admin. Code tit. 48, pt. I, § 4423(B)(3)(e) and La. Admin. Code tit. 48, pt. I, 4401 (definition of "active admitting privileges"), are, for the foregoing reasons, likewise DECLARED UNCONSTITUTIONAL and PERMANENTLY ENJOINED.
4. Judgment shall be entered in favor of the Plaintiffs and against the Defendant by separate document in conformity with Rule 58.

September 19, 2016

Respectfully submitted,

/s/ *William E. Rittenberg*

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2016, a copy of the foregoing has been served upon counsel of record by email.

/s/ *Zoe Levine*
Zoe Levine