

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

DO NO HARM, a nonprofit corporation  
incorporated in the State of Virginia

Plaintiff,

v.

JOHN BEL EDWARDS, in his official  
capacity as Governor of Louisiana,

Defendants.

No. 5:24-cv-00016

**OPPOSITION TO MOTION TO COMPEL ON BEHALF OF JEFF LANDRY,  
IN HIS OFFICIAL CAPACITY AS LOUISIANA GOVERNOR**

MAY IT PLEASE THE COURT:

Plaintiff filed suit against Governor John Bel Edwards just before his term ended challenging the constitutional validity of La. R.S. 37:1263(B) alleging that the statute impermissibly mandates the appointment of Louisiana Board of Medical Examiners members based upon their status as a minority. Before the Court is a Motion to Compel Answers to Interrogatories and Responses to Requests for Production of Documents filed by the Plaintiff claiming deficient discovery responses. Governor Jeff Landry, who became a party by operation of Rule 25(d), opposes the Motion to Compel filed by the Plaintiff for lack of jurisdiction based on sovereign immunity and mootness. Additionally, Governor Landry does not have information to respond nor custody of many of the documents requested.

Jeff Landry was elected Governor on October 14, 2023 and inaugurated on January 8, 2024 and presently serves as Governor of the State. In his Declaration dated August 26, 2024, attached as Exhibit A, Governor Landry states that upon review of the statute, he will neither make appointments according to the minority mandate of the statute nor enforce the appointment provisions of the statute. He attests that he regards the statute to be contrary to the U.S. and Louisiana Constitutions by requiring appointment on account of a candidate's minority status. Thus, the Governor announced an unwillingness to enforce the provision of the statute challenged by the Plaintiffs such that the *Ex Parte Young* exception to sovereign immunity does not apply. With no threat of enforcement by the named official, the claim is barred by sovereign immunity, and the Plaintiff's Motion to Compel must be denied as an unnecessary intrusion into Louisiana's sovereignty and an unwarranted expense to the State. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 324 (5th Cir. 2024). While ordinarily brought by a motion to dismiss, sovereign immunity as a jurisdictional objection can be raised at any point in federal proceedings. *Cozzo v. Tangipahoa Par. Council--President Gov't*, 279 F.3d 273, 280 (5th Cir. 2002). Moreover, *Ex Parte Young's* narrow exception traditionally applies against defendants "who threaten and are about to commence proceedings, either of a civil or criminal nature." *United States v. Abbott*, 85 F.4th 328, 335 (5th Cir. 2023); see also, *Tawakkol v. Vasquez*, 87 F.4th 715, 719 (5th Cir. 2023), (the Supreme Court has also instructed that the exception must be narrowly construed to serve only the original purpose).

Additionally, the case is moot by virtue of the Governor's statement that he will not enforce the statute by reason of its constitutional invalidity. A Declaration under penalty of perjury by the state officer named as defendant is sufficient to ensure that the alleged misconduct will not occur. Courts are justified in treating a voluntary governmental cessation of conduct with some solicitude, mooted cases that might have been allowed to proceed had the defendant not been a public entity. *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009), *aff'd sub nom. Sossamon v. Texas*, 563 U.S. 277, 131 S. Ct. 1651, 179 L. Ed. 2d 700 (2011). In this instance, the case or controversy is resolved by voluntary cessation of the conduct by the officer who has exclusive enforcement authority over the offensive statute.

**The Motion to Compel is understandable but unwarranted**

Plaintiff served Interrogatories and Requests for Production of Documents on or about March 29, 2024. Most of the inquiries were directed to the appointment of members to the Louisiana Board of Medical Examiners, which is statutorily charged to protect the public against the unprofessional, improper, and unauthorized practice of medicine. La. R.S. 37:1261. Undersigned counsel made efforts to identify responsive documents and information. Governor Landry's office had a handful of responsive documents that were provided as initial Responses to Request for Production of Documents, #1. Otherwise, documents pertaining to appointments by the Edwards administration were boxed and sent to the Louisiana State Archives before Governor Landry took office, where they are retained as public records equally accessible to the Plaintiff and the Defendant. La. R.S. 44:402.

The undersigned made further efforts to obtain information and documents under the control of the Board of Examiners, but the material requested from the Board has not been provided. Although the Board is an agent of the State of Louisiana, it is first and foremost an independent Board operating under the authority of the Louisiana Department of Health and is not an agent of the Governor's office. See, R.S. 36:259. The burden is on the party seeking discovery to show that the other party has control over the material. *Whale Cap., L.P. v. Ridgeway*, No. CV 22-2570, 2024 WL 838505, at \*4 (E.D. La. Feb. 28, 2024), reconsideration denied, No. CV 22-2570, 2024 WL 894866 (E.D. La. Mar. 1, 2024). To establish control over documents in the possession of a non-party, the movant must show that there is a relationship because of some affiliation, employment, or statute, such that a party is able to command release of certain documents in the custody and control of non-parties. *Id.* Here, the Plaintiff has made no such showing. While the Governor is head of the executive branch of government, he does not control all departments of state government. Certainly, had the State been sued, it could demand that documents be provided, but the Governor is an officer of the State and not the State itself and was the only official named in the Complaint.

While Plaintiffs are understandably frustrated by the lack of documents and information – the undersigned candidly hoped to be able to provide more – but the Governor does not have custody or control of the requested documents beyond those which he has produced. The Plaintiff, however, has ready access to the records of the

John Bel Edwards administration at the Louisiana Archives Building maintained by the Louisiana Secretary of State. See, Exhibit A, ¶ 12.

**Particular discovery requests**

Turning to the particular inquiries about which the Plaintiff complains:

**Interrogatory No. 7:**

Plaintiff asked for the race of all current members of the Louisiana Board of Medical Examiners. The undersigned asked the Board for that information. It was not provided. However, the identity of the Board members with their addresses is provided on the Louisiana State Legislature website by name and address and appointing authority. The race of each member, to the extent it is relevant to a statute that requires minority members, is not listed.

**Interrogatories Nos. 8-10:**

These interrogatories focus on the race of applicants, members, and treatment of applications by race. Again, the undersigned requested the information from the Board and did not receive it. The criteria established in the statute is minority, not exclusively race.

**Interrogatories Nos. 12-13:**

The information needed to respond to these interrogatories was requested from the Louisiana Board of Medical Examiners and was not received. The race of the applicant might not have been considered in the recommendation or selection of members.

**Request for Production Nos. 5-8:**

Request No. 5 asked for documents that would have been appointed by Governor Edwards, and those records are maintained in the Louisiana Archives as public records. Otherwise, the Board did not provide the records.

Request No. 6 is the same as No. 5

Request No. 7 is the same as Nos. 5 and 6.

Request No. 8 is the same as Nos. 5-7.

**Request for Production No. 10:**

Request No. 10 falls into the same category as Nos. 5-8.

**Request for Production No. 12:**

The bulk of the requested records are records of the administration of Governor John Bel Edwards, and as such are maintained in Louisiana Archives available as public records. Otherwise, the documents have not been provided by the Board. The records in the possession and custody of Governor Landry were provided by supplemental responses on August 23, 2024.

Responses to Request for Production Nos. 5-12 are partially answered by Responses to Requests Bates Nos. Prod-AG-0001, Prod-AG-0002, Prod-AG-0003, Prod-AG-0004, Prod-AG-0005, and Prod-AG-0006, containing announcements to the Board by Governor John Bel Edwards produced in response to Request for Production No. 1.

**CONCLUSION**

The Court lacks jurisdiction given Governor Landry's unqualified declaration that he does not intend to abide by the contested statute's mandate that members of

the Board be appointed according to their minority status. The declaration is un rebutted and Plaintiff makes no showing that the Governor's statement might be doubted. He is the appointing authority. His Declaration is a representation to the Court that he will not enforce the statute that Plaintiff complains of.

Nevertheless, even if the Court had jurisdiction, the Governor does not have custody of the requested records and information and, despite his counsel's efforts, has been unable to obtain them.

Respectfully submitted,

**LIZ MURRILL**  
**LOUISIANA ATTORNEY GENERAL**

*s/ Carey T. Jones*  
CAREY T. JONES (#07474)  
Assistant Attorneys General  
OFFICE OF THE ATTORNEY GENERAL  
LOUISIANA DEPARTMENT OF JUSTICE  
Post Office Box 94005  
Baton Rouge, Louisiana 70804  
Telephone: (225) 326-6000  
Facsimile: (225) 326-6098  
E-mail: [JonesCar@ag.louisiana.gov](mailto:JonesCar@ag.louisiana.gov)

*Counsel for Defendant, Jeff Landry, in his  
official capacity as Governor of Louisiana*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2024 the foregoing Opposition to Motion to Compel was electronically filed with the Clerk of Court via the Court's CM/ECF

system, which sends notification of such filing to all counsel of record by electronic means.

s/ Carey T. Jones  
Carey T. Jones