UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

DO NO HARM	CASE NO. 24-CV-016
V.	JUDGE EDWARDS
JOHN BEL EDWARDS	MAGISTRATE JUDGE HORNSBY

MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

NOW INTO COURT, through undersigned counsel, comes Jeff Landry, in his official capacity as Governor of Louisiana, who hereby moves to dismiss Plaintiff's claims pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction. The current Governor has signed and filed an affidavit declaring that he intends neither to enforce nor follow La. R.S. 37:1263(B) by appointing members of the State Board of Medical Examiners based on race. Doc. 22-1. Accordingly, there is no active case or controversy under Article III of the United States Constitution, rendering Plaintiff's claims moot and depriving this Court of jurisdiction to proceed further.

Moreover, the suit is one against the State prohibited by the 11th Amendment of the U.S. Constitution and as such should be dismissed.

THEREFORE, defendant Jeff Landry respectfully requests that for these and reasons set out in the accompanying memorandum, the instant motion be GRANTED and that this action be DISMISSED.

Dated: 12/20/24

Respectfully submitted,

LIZ MURRILL

LOUISIANA ATTORNEY GENERAL

s/ *Carey T. Jones*
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Counsel for Defendant, Jeff Landry, in his official capacity as Governor of Louisiana

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing together with a supporting memorandum and proposed order 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

UNITED STATES DISTRICT COURT
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DO NO HARM	CASE NO. 24-CV-016
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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant Jeff Landry, in his official capacity as Governor of Louisiana, submits this memorandum of law in support of his motion to dismiss the Complaint filed by Plaintiff Do No Harm (the "Complaint"). Doc. 1. The Plaintiff requested a permanent prohibitory injunction forbidding the Governor and his agents from enforcing, or attempting to enforce, the racial mandates in La. R.S. § 37:1263(B). Doc. 1. This Court does not retain jurisdiction to issue an injunction against the Defendant as the Governor has now signed and filed a Declaration declaring that neither intends to enforce nor follow La. R.S. 37:1263(B) by appointing members of the State Board of Medical Examiners based on race. Doc. 22-1. Additionally, because Governor is not a proper *Ex parte Young* defendant, the suit is of necessity one against the State, which is barred by sovereign immunity. For these reasons, as detailed below, the Court should dismiss the Complaint in its entirety.

I. LEGAL STANDARD

Article III, Sections 1 and 2 of the United States Constitution grants federal courts jurisdiction to decide “Cases” or “Controversies.” As the Supreme Court has explained, “Sometimes, events in the world overtake those in the courtroom, and a complaining party

manages to secure outside of litigation all the relief he might have won in it. When that happens, a federal court must dismiss the case as moot." *FBI v. Fikre*, 601 U.S. 234, 240 (2024).

A defendant's voluntary cessation of a challenged practice will render a case moot only if the defendant demonstrates that the alleged conduct "cannot 'reasonably be expected to recur.'" *Id.* at 241 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000)). This standard applies equally to governmental defendants, who, like private parties, bear the burden of showing that their actions eliminate any reasonable expectation of recurring harm.[1] Because mootness precludes the existence of a case or controversy, dismissal is mandatory where the defendant meets this burden. See *FBI v. Fikre*, 601 U.S. 234, 240 (2024).

II. ARGUMENT

A. The case is moot in light of the Declaration of the Governor that he, as the sole official with appointing authority over members of the Board of Medical Examiners, will not make appointments on the basis of race or minority status

The Declaration filed by Governor Landry eliminates any reasonable expectation that he will enforce the challenged statute in a discriminatory manner, thereby negating the injury alleged by Plaintiff and rendering this case moot under well-established principles of federal jurisdiction. A case becomes moot when the defendant can show that the alleged conduct "cannot 'reasonably be expected to recur.'" *Id.* at 241 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000)). Federal courts have consistently held that the same standard applies to governmental defendants. [2]

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[1] See *FBI v. Fikre*, 601 U.S. 234, 240 (2024); *West Virginia v. EPA*, 597 U.S. 697, 719 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719-720 (2007).

[2] See *FBI v. Fikre*, 601 U.S. 234, 240 (2024); *West Virginia v. EPA*, 597 U.S. 697, 719 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719-720 (2007).

Governor Landry has voluntarily and unequivocally pledged to the Court that he will not enforce that portion of the statute that Plaintiff seeks to enjoin. Plaintiff's Complaint alleges that the Governor "must ensure that 'at least' two of the seats with a racial mandate are filled by 'minority' candidates during the next appointment cycle." Doc. 1. However, this argument fails as the Declaration filed by Governor Landry eliminates any reasonable expectation that the alleged discrimination will occur. Doc 22-1. In the filed Declaration, Governor Landry explicitly states that "the challenged statute in this instance… mandates the appointment of a member to the Louisiana State Board of Medical Examiners contrary to Title VI and the United States Constitution as prohibited appointment based solely on improper classifications." Doc. 22-1. Furthermore, Governor Landry affirms, "I do not intend to now or in the future appoint members to the Louisiana State Board of Medical Examiners based upon their race, national origin, or minority status." *Id.*

The Declaration is not merely a statement of intent but a sworn and official declaration under penalty of perjury. As a public official, his disavowal carries significant legal and practical weight, as any future deviation from this sworn statement could expose him to legal and reputational consequences. The Declaration affirms the Governor's view that La. R.S. 37:1263(B) violates both Title VI and the United States Constitution. Given his official statement, it would be illogical and indefensible for the Governor to reverse course and resume enforcement of the statute. The Declaration reflects Governor Landry's personal commitment and his recognition of the constitutional limits on his authority, reinforcing that any future discriminatory enforcement of La. R.S. 37:1263(B) cannot be reasonably expected to recur. This, in turn, negates the Plaintiffs' asserted injury.

The Declaration signed by Governor Landry, fully satisfies the Supreme Court's standard for dismissing a case as moot as a result of voluntary cessation. Consequently, this case is moot and dismissal of the Complaint under Rule 12(b)(1) should be granted.

B. With no actionable claim against a state officer or official, the suit is one against the State itself that is barred by sovereign immunity

Governor Landry has effectively removed himself from the status of a state officer empowered to enforce the contested statute, and any judgment that might be rendered would of necessity be a prohibited judgment against the State itself rather than one of the state's officers in violation of Article 11 of the U.S. Constitution and *Ex parte Young*, 209 U.S. 123 (1908).

To be a proper defendant under *Ex parte Young*, a state official must have a sufficient connection to the enforcement of the law being challenged. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024). The Fifth Circuit has established "guideposts" to aid in determining what constitutes a sufficient connection. They are: (1) the state official has "more than the general duty to see that the laws of the state are implemented," *i.e.*, a "particular duty to enforce the statute in question"; (2) the state official has "a demonstrated willingness to exercise that duty"; and (3) the state official, through her conduct, "compel[s] or constrain[s persons] to obey the challenged law." *Id*. 325. Although the Governor is authorized to make Board appointments based on minority status, his commitment to the Court in a Declaration in this proceeding that he will not exercise that authority means that the Governor does not have a sufficient connection to the alleged portion of the statute.

The second requisite of *Mi Familia*, willingness to enforce, is not satisfied. The Governor has not demonstrated or threatened a willingness to exercise the offending portions of the statute; to the contrary, he attests that he will *not* exercise the authority granted to him by the offending provision of the statute. Governor Landry lacks a "demonstrated willingness" to enforce the

challenged statute and thus is not a proper *Ex parte Young* officer for purposes of this suit. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 328-329 (5th Cir. 2024.

Nor is it alleged that Governor Landry has acted in a way to compel or constrain persons to obey the challenged law. The Complaint does not complain that Governor Landry has required the Board of Medical Examiners to admit a person to sit on the Board by reason of his or her minority status. Again, the Governor's Declaration precludes prospective enforcement of the challenged statute. That is a far cry from conduct that constrains any third person to obey the challenged Acts or statute.

Governor Landry is not the proper *Ex parte Young* defendant. He lacks a sufficient enforcement connection by reason of his vow to withhold enforcement making the State the object of the suit. Plaintiff seeks to invalidate a state statute, which goes to the heart of the administration of the state. The Amended Complaint's allegations that the Attorney General is poised to enforce the subject provisions are not plausible, and an action against the state is not permitted. Accordingly, the Court lacks jurisdiction over the subject matter of the suit and should be dismissed.

III. CONCLUSION

The Court lacks jurisdiction given the Declaration signed by Governor Landry, fully satisfies the Supreme Court's standard for dismissing a case as moot due to voluntary cessation. Consequently, this case is moot and dismissal of the Complaint under Rule 12(b)(1) should be granted. Defendant respectfully requests that this Court grant the Motion to Dismiss and dismiss Plaintiff Do No Harm's Complaint pursuant to Fed. R. Civ. P. 12(b)(1).

Dated: 12/20/24

Respectfully submitted,

LIZ MURRILL

LOUISIANA ATTORNEY GENERAL

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

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing 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