

No. 25-30568

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Do No Harm, a nonprofit corporation incorporated in the  
State of Virginia,

Plaintiff – Appellant,

v.

Jeff Landry, in his official capacity as the Governor for the State of  
Louisiana as successor in office to Governor John Bel Edwards,

Defendant – Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana, Shreveport Division  
No. 5:24-cv-00016-JE-MLH (Hon. Jerry Edwards, Jr.)

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**APPELLANT’S OPENING BRIEF**

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## **CERTIFICATE OF INTERESTED PERSONS**

No. 25-30568; *Do No Harm v. Jeff Landry*

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiff-Appellant Do No Harm is a nonprofit corporation, organized under the laws of the State of Virginia, with a principal place of business in Virginia, without parent corporations. No corporation or publicly held entity holds any stock in Do No Harm. No other corporation has a direct financial interest in the outcome of this litigation.

## **STATEMENT REGARDING ORAL ARGUMENT**

This case challenges the constitutionality of a Louisiana law that expressly discriminates on the basis of race in establishing criteria for membership on the Louisiana State Board of Medical Examiners. Rather than defend the merits of that law—in fact, Governor Landry has conceded that it is unconstitutional—the Governor sought dismissal, which the district court granted, on the grounds that the Governor is an improper defendant because he refuses to comply with the challenged law. Given the weighty issues at stake in this case, including the constitutionality of the law, as well as the vitality of the voluntary cessation doctrine and the extent to which government officials can engage in gamesmanship to avoid judicial review, oral argument would be helpful to this Court in resolving them.

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## **JURISDICTIONAL STATEMENT**

The district court had subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. The district court's order granting Defendant's Motion to Dismiss is a final decision over which this Court has appellate jurisdiction. *See* 28 U.S.C. § 1291. The district court's order granting the motion to dismiss was entered on September 29, 2025. ROA.311. Plaintiff-Appellant Do No Harm filed a notice of appeal on September 30, 2025. ROA.316. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(A).

## **STATEMENT OF THE ISSUES**

The issues on appeal are:

1. Whether Governor Jeff Landry is a proper defendant under *Ex parte Young*, 209 U.S. 123 (1908).
2. Whether La. Stat. § 37:1263(B)(2)–(3), (7)–(8), violates the Equal Protection Clause of the Fourteenth Amendment.

## **INTRODUCTION**

Louisiana law expressly commands the Governor to discriminate on the basis of race when making appointments to the Louisiana State Board of Medical Examiners (Medical Board or the Board). La. Stat.

§ 37:1263(B)(2)–(3), (7)–(8) (Racial Mandate). Both parties to this case agree that the Racial Mandate is unconstitutional. *See* ROA.104. Yet the district court dismissed the case without reaching the merits holding that Defendant-Appellee Governor Jeff Landry’s litigation declaration disclaiming enforcement of the statute rendered him immune from suit. *See* ROA.311. That ruling cannot be squared with *Ex parte Young*, the voluntary-cessation doctrine, or basic principles of judicial review.

If affirmed, the decision below would establish a dangerous rule: that a state official may insulate an unconstitutional statute from judicial review simply by promising not to enforce it—while leaving the statute fully operative and binding on successors. Nothing in the Constitution permits an executive official to nullify a duly enacted law, evade review, and retain the power to resume enforcement at any time. Under the district court’s approach, plainly unconstitutional statutes could remain on the books indefinitely, enforced intermittently or opportunistically, yet forever shielded from judicial scrutiny.

That danger is concrete here. Even accepting the Governor’s present assurance, the Racial Mandate continues to compel discrimination by entities required to submit lists of possible nominees,

like the Louisiana State University Health Sciences Centers at New Orleans and Shreveport, and the Louisiana Hospital Association. And because the Governor is sued in his official capacity, his declaration binds neither future governors nor even himself tomorrow. Absent judicial relief, Louisiana law will continue to require race-based appointments—precisely the ongoing constitutional violation *Ex parte Young* exists to remedy.

Because Governor Landry is the official charged by statute with enforcing the Racial Mandate, and because a nonbinding declaration cannot moot a live constitutional controversy or confer sovereign immunity, the district court’s dismissal should be reversed. And given the Governor’s concession that the statute violates the Equal Protection Clause, this Court should remand with instructions to enter summary judgment in favor of Plaintiff-Appellant Do No Harm.

## **STATEMENT OF THE CASE**

### **A. The Louisiana State Board of Medical Examiners**

The Louisiana State Board of Medical Examiners regulates the practice of medicine in Louisiana. La. Stat. § 37:1270. The Board is currently comprised of ten voting members appointed by the Governor

and subject to Senate approval. La. Stat. § 37:1263(B). Of these ten seats, nine must be filled by physicians and one by a member of the public. *Id.*

All nine physician members of the Board must be residents of Louisiana for at least six months, licensed and in good standing to engage in the practice of medicine in Louisiana, actively engaged in the practice of medicine, not been convicted of a felony, not been placed on probation by the Board, and have had at least five years of experience in the practice of medicine in Louisiana. *Id.* § 37:1263(C). In addition to these requirements, the nine physicians are also recruited from varying backgrounds: (a) two must be appointed from a list of names submitted by the Louisiana State Medical Society, with one of these members practicing in a parish or municipality with a population of less than twenty thousand people (§ 37:1263(B)(1)); (b) one member is appointed from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans (§ 37:1263(B)(2)); (c) one member is appointed from a list submitted by the Louisiana State University Health Sciences Center at Shreveport (§ 37:1263(B)(3)); (d) one member is appointed from a list of names submitted by Tulane Medical School (§ 37:1263(B)(4)); (e) two members are appointed from a list submitted by



the Louisiana Medical Association (§ 37:1263(B)(5)); (f) one member is appointed from a list submitted by the Louisiana Academy of Family Practice Physicians (§ 37:1263(B)(6)); and (g) one member is appointed from a list submitted by the Louisiana Hospital Association (§ 37:1263(B)(7)).

The consumer member of the Board must be a citizen of the United States, a resident of Louisiana for at least one year immediately prior to appointment, have attained the age of majority, have never been licensed by any of the licensing boards identified in § 36:259(A), not have a spouse that has ever been licensed by a board identified in § 36:259(A), never been convicted of a felony, and not have or ever had a material financial interest in the healthcare profession. *Id.* § 37:1263(C)(2).

## **B. The Racial Mandate**

In 2018, the Louisiana Legislature enacted House Bill 778 (Act No. 599). The law added three seats to the then-seven-member Medical Board. *Id.* Louisiana law now requires the Governor to ensure that “at least every other member [appointed to the Board] . . . shall be a minority appointee” in regard to three of the physician seats as well as the public consumer seat. *See* § 37:1263(B)(2)–(3), (7)–(8). The three physician seats

subject to this Racial Mandate are those pertaining to the Louisiana State University Health Sciences Centers at New Orleans and Shreveport, and the Louisiana Hospital Association. § 37:1263(B)(2)–(3), (7).

When House Bill 778 was first considered in the Senate Health and Welfare Committee, an amendment was offered to require the proposed new seat on the Medical Board for which the Louisiana Hospital Association would submit names to the Governor to include a race-based quota. Video Recording of the Senate Health and Welfare Committee at 1:34:58 (Apr. 25, 2018).<sup>1</sup> Under questioning, the bill sponsor (Representative Jackson) stated that she was contacted by minority physicians in Louisiana who complained that the Medical Board frequently lacked minority representation. *Id.* Senator Claitor then asked about the then-current composition of the Board and was told that two of the Board’s then-seven seats were held by black women. *Id.* Senator Claitor also asked how a “minority” would be defined for the purposes of the statute and was told that it would be defined the same as

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<sup>1</sup> Available at [https://senate.la.gov/s\\_video/videoarchive.asp?v=senate/2018/04/042518H~W\\_0](https://senate.la.gov/s_video/videoarchive.asp?v=senate/2018/04/042518H~W_0).

elsewhere in state code. *Id.* Representative Jackson explained the perceived importance of HB 778 as addressing the stated need that the Board should reflect the composition of the state's physicians—a view that Senator Barrow echoed. *Id.* Later that session when HB 778 was heard and debated on the Senate floor, Senator Morrell offered several amendments, including amendments to add additional seats to the Board and additional seats subject to an alternating minority quota. Video Recording of Senate Proceedings at 1:40:40 (May 9, 2018).<sup>2</sup> Thus, at the time HB 778 was enacted, reserving seats on the Board for members of minority races was top of mind for legislators and the only explanation offered was the desire to achieve proportional representation on the basis of race.

The legislative record contains no discussion of racial discrimination, disparities, statistics, or even anecdotes of discrimination. There is only a general desire to achieve proportional representation on the basis of race. ROA.234–35; Video Recording of the Senate Health and Welfare Committee at 1:34:58 (Apr. 25, 2018); Video

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<sup>2</sup> Available at [https://senate.la.gov/s\\_video/videoarchive.asp?v=senate/2018/05/050918SCHAMB\\_0](https://senate.la.gov/s_video/videoarchive.asp?v=senate/2018/05/050918SCHAMB_0).

Recording of Senate proceedings at 1:40:40 (May 9, 2018). Indeed, throughout discovery in this case, the only interest that Governor Landry claimed is advanced by the Racial Mandate is ensuring that “all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board.” ROA.234. Governor Landry also suggested that “membership in a racial minority group increases the likelihood that a person will speak with concern about the welfare of that group.” ROA.236.

### **C. Do No Harm**

Plaintiff-Appellant Do No Harm is a national nonprofit corporation and membership organization made up of medical professionals, students, policymakers, and other interested members of the general public. ROA.10–11, 224. Its mission is to protect healthcare from a radical, divisive, and discriminatory ideology. *Id.*

Do No Harm’s membership includes one or more individuals who are licensed physicians in Louisiana and eligible for membership on the Medical Board. ROA.10–11, 225–26. Do No Harm’s membership also includes one or more members who are eligible to be a public consumer member of the Board. ROA.10–11, 226. Do No Harm has physician and

consumer members who are qualified, willing, and able to be appointed to the Board, but the Racial Mandate precludes them from being considered for appointment, or at least disadvantages them from being considered on equal footing with other candidates. ROA.14, 225–26.

#### **D. Procedural History**

The complaint in this case was filed on January 4, 2024. ROA.9. Do No Harm challenged the Racial Mandate as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. After the parties completed discovery, Governor Landry moved to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. Because of a declaration signed by the Governor stating he would not enforce the Racial Mandate, ROA.103, the Governor claimed that this case was moot and that he was not a proper defendant. Nevertheless, Do No Harm proceeded to file a motion for summary judgment. In opposition, Governor Landry conceded the merits of the Equal Protection challenge but reasserted his claims of mootness and that he was not a proper defendant. Dkt. No. 39. The district court granted the motion to dismiss—and denied the motion for summary

judgment as moot—on September 29, 2025. ROA.311. This appeal followed. ROA.316.

## SUMMARY OF ARGUMENT

Governor Landry is the proper defendant under *Ex parte Young*. Louisiana law expressly assigns the Governor—and only the Governor—the duty to appoint members to the Louisiana State Board of Medical Examiners in accordance with the challenged Racial Mandate. *See* § 37:1263(B)(2)–(3), (7)–(8). Relying solely on the Governor’s litigation declaration disclaiming enforcement, ROA.103, the district court nevertheless held that he is immune from suit. ROA.312. That ruling has no basis in *Ex parte Young* or this Court’s precedent. A state official cannot defeat judicial review of an unconstitutional statute simply by promising not to comply with it while the statute remains in force.

The district court acknowledged that Do No Harm satisfied the traditional requirements for the *Ex parte Young* exception to sovereign immunity. *See Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 471 (5th Cir. 2020) (en banc). But it treated the Governor’s declaration as dispositive under three “guideposts” discussed in *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024). *See* ROA.313.

That was error. Those guideposts do not authorize executive officials to nullify statutes by declaration, nor do they permit courts to ignore the official's statutory authority, past enforcement, and ongoing coercive effects. Here, all three factors confirm that the Governor is the proper defendant: he alone is charged with enforcing the Racial Mandate; the mandate has been enforced in the *very recent* past, *see* ROA.180–83; and it continues to compel discriminatory conduct by the Governor and third parties today.

Nor is this case moot. Accepting the Governor's theory would eviscerate the voluntary-cessation doctrine and invite precisely the sort of manipulation it exists to prevent. To establish mootness, a government defendant bears the "heavy burden" to make "it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env. Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968)). That burden is typically met by repeal or amendment of a challenged law—not by a single official's nonbinding promise of nonenforcement. The Racial Mandate remains on the books, binds Governor Landry and future governors as a matter of Louisiana

law, and continues to compel race-based decision making by entities participating in the appointment process. As a matter of law, the controversy remains live.

Allowing dismissal on these facts would have sweeping consequences. It would permit governors to insulate unconstitutional statutes from judicial review whenever they disagree with them, leaving such laws dormant, selectively enforced, or revived at will—yet forever beyond the reach of the courts. The Constitution does not tolerate an executive veto over judicial review, and this Court’s precedents do not permit it.

Finally, although the district court did not reach the merits, this Court can and should. First, Governor Landry has conceded that the Racial Mandate violates the Equal Protection Clause. *See* ROA.104; Def’s Opp’n. to Pl.’s Mot. Summ. J., Dkt. No. 39. And the case was fully briefed on cross-motions for summary judgment before the district court, with a complete factual record and no disputed issues material to the constitutional question. Even if this Court independently analyzes the Racial Mandate, it has no hope of satisfying strict scrutiny. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*,



600 U.S. 181, 206 (2023) (Race-based classifications are presumptively unconstitutional and can only be overcome if the government satisfies the “daunting two-step examination” of strict scrutiny). Because there is no factual dispute and no plausible constitutional defense, remand for further proceedings would serve no purpose. The judgment should be reversed, and the case remanded with instructions to enter summary judgment in favor of Do No Harm.

## **ARGUMENT**

### **I. Standard of Review**

A district court’s dismissal of a complaint is reviewed *de novo*. *Flores v. Pompeo*, 936 F.3d 273, 276 (5th Cir. 2019). A motion to dismiss can only be granted when the complaint fails to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Courts “must accept as true all of the allegations contained in a complaint.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

### **II. Governor Landry Is the Proper Defendant**

Even though Governor Landry conceded below that the Racial Mandate is unconstitutional, the district court dismissed the case on

Eleventh Amendment sovereign immunity grounds upon holding that the Governor is not the proper defendant. ROA.312. The district court reached that conclusion solely based on Governor Landry's promise not to enforce the Mandate. *See* ROA.312. A litigation declaration disclaiming enforcement is not law, is not binding, and is not a recognized basis for sovereign immunity under *Ex parte Young*. And an unenforceable promise cannot outweigh a history of enforcement or the fact that the Governor—and only the Governor—is mandated to comply with the Mandate in making appointments to the Medical Board.

The *Ex parte Young*, 209 U.S. 123 (1908), exception to state sovereign immunity granted by the Eleventh Amendment applies where: (1) A plaintiff names “individual state officials as defendants in their official capacities;” (2) plaintiff alleges “an ongoing violation of federal law; and (3) the relief sought [is] properly characterized as prospective.” *Green Valley Special Util. Dist.*, 969 F.3d at 471 (citations omitted). The district court acknowledged that Governor Landry did “not dispute that Do No Harm meets these general requirements.” ROA.313.

Nor could Governor Landry have disputed that Do No Harm's Complaint satisfies all three factors. The Complaint names the Governor

as the Defendant in his official capacity as Governor of Louisiana, ROA.11, and seeks only prospective relief, ROA.15. Given that La. Stat. § 37:1263(B) requires the Governor to comply with the Racial Mandate regardless of Governor Landry’s views on the law, the violation of Do No Harm’s members’ constitutional rights is also ongoing until the law is enjoined or repealed. *See* ROA.9–11, 13–15. *See also* La. Stat. § 37:1263(B)(2)–(3), (7) (“At least every other member appointed from a list provided for in this Paragraph *shall be* a minority appointee.”) (emphasis added); § 37:1263(B)(8) (“At least every other consumer member appointed to the board *shall be* a minority appointee.”) (emphasis added).

To establish that a state official is a proper defendant under *Ex parte Young*, the Fifth Circuit has articulated three additional “guideposts.” *See Mi Familia Vota*, 105 F.4th at 325 (citing *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022)). First, the official must have “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.” *Id.* Second, the official must have “a demonstrated willingness to exercise that duty.” *Id.* Third, the official “compels or constrains

persons to obey the challenged law.” *Id.* (cleaned up). Each of these requirements is satisfied beyond any serious dispute.

**A. Gov. Landry has sole authority to enforce the mandate**

La. Stat. § 37:1263(B) gives Governor Landry the sole authority to make appointments to the Medical Board. This is undisputed. *See* ROA.313. Indeed, in exercising his statutory responsibility, Governor Landry is required to make certain appointments based on a candidate’s status as a minority. § 37:1263(B)(2)–(3), (7) (“At least every other member appointed from a list provided for in this Paragraph *shall be* a minority appointee.”) (emphasis added); § 37:1263(B)(8) (“At least every other consumer member appointed to the board *shall be* a minority appointee.”) (emphasis added). As a result, Governor Landry has authority to enforce “the particular statutory provision that is the subject of the litigation.” *Mi Familia Vota*, 105 F.4th at 327 (quoting *Tex. All.*, 28 F.4th at 672).

**B. The governor has enforced the racial mandate**

This case does not present a hypothetical or purely pre-enforcement challenge, but a statute with a documented history of race-based enforcement by the Governor’s office. Willingness to enforce the Racial

Mandate means that the Governor “must have taken some step to enforce” the law. *Mi Familia Vota*, 105 F.4th at 329 (quoting *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 401 (5th Cir. 2020)). “The bare minimum” step toward enforcement “appears to be ‘some scintilla’ of affirmative action by the state official.” *Tex. Democratic Party*, 961 F.3d at 401. Past enforcement can satisfy that showing. *Mi Familia Vota*, 105 F.4th at 329; *see also Air Evac EMS, Inc. v. Tex., Dep’t of Ins., Div. of Workers’ Comp.*, 851 F.3d 507, 519 (5th Cir. 2017).

Documents produced in discovery show that Governor Landry’s immediate predecessor, Governor Edwards, considered race in seeking out candidates for seats on the Medical Board. ROA.170–183. Consideration of Governor Edwards’ past enforcement is appropriate here as “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989); *accord Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) (“an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity.”). The Governor—the official holding the office of the

Governor of Louisiana—has thus taken steps to enforce the Racial Mandate in the past. Regardless of the individual currently holding office, Governor Landry, declaring his personal intention not to comply with the duly enacted statute, it still requires the Governor to comply with it. *See* ROA.13–14.

Previous enforcement by his immediate predecessor, Governor Edwards, also distinguishes this case from *Mi Familia Vota*. There, this Court held that a state official was not a proper defendant because the case was a pre-enforcement challenge and the official pledged not to enforce the challenged law until after the lawsuit was resolved. *See* 105 F.4th at 330–31. Here, the official holding office when the case was filed was complying with Louisiana law and enforcing the Racial Mandate.<sup>3</sup>

In any event, this Court noted in *Mi Familia Vota* that it was not “resolv[ing] whether statements made during the course of litigation about future behavior, *by themselves*, are sufficient to insulate state officials from *Ex parte Young*’s exception to sovereign immunity.” *Id.* at 331 n.12 (emphasis added). This Court declined to do so because the

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<sup>3</sup> Governor Edwards was initially named as the Defendant in this case, ROA.9, but was automatically substituted under Federal Rule of Civil Procedure 25(d) upon Governor Landry succeeding him in office.

Texas official's nonenforcement was simply "further evidence" that the official was not the proper defendant. *Id.* But here, the *only evidence* that Governor Landry is not the proper defendant is his declaration that he will not enforce the Racial Mandate. *See* ROA.103. Given Governor Edwards' prior enforcement of the Mandate and that the Mandate remains the law of Louisiana, this Court should hold that Governor Landry's declaration alone is insufficient to nullify the history of enforcement of the Racial Mandate.

**C. The governor compels third parties to comply with the racial mandate**

In addition to the Governor having previously enforced the Racial Mandate, Governor Landry "compel[s] or constrain[s]" others to comply with it. *Mi Familia Vota*, 105 F.4th at 332 (quoting *Tex. All.*, 28 F.4th at 672).

- Because the Governor's appointments require Senate confirmation, La. Stat. § 37:1263(B), and because the statute requires "at least every other" appointee for certain seats be "a minority appointee," La. Stat. § 37:1263(B)(2)–(3), (7)–(8), the Senate is not free to exercise independent judgment. It is compelled to ratify the Governor's race-based selections at

proscribed intervals and correspondingly constrained from considering nonminority candidates, including members of Do No Harm, *see* ROA.9–11, 14.

- The Louisiana State University Health Sciences Centers at New Orleans and Shreveport are compelled to provide the Governor with at least one name of a minority candidate for appointment to the Board to comply with the Racial Mandate. La. Stat. § 37:1263(B)(2)–(3).
- Similarly, the Louisiana Hospital Association is compelled to provide the Governor with at least one name of a minority candidate for appointment to the Board to comply with the Racial Mandate. La. Stat. § 37:1263(B)(7).
- Once confirmed by the Senate, the Governor’s appointees—whether selected pursuant to the Racial Mandate or not—lawfully take office and exercise regulatory authority. Other Board members, regulated physicians, healthcare entities, and the Board itself are therefore required to treat those appointments as valid and binding, even when the



appointment was made under the challenged race-based criteria.

If the Governor—the only official charged by statute with making these appointments—is not a proper defendant, then no state official could ever be sued to enjoin this law, a result *Ex parte Young* does not permit.

This case is far afield from those *Ex parte Young* cases where there is confusion as to which official is responsible for enforcing a statute or there exists textual vagueness or where multiple parties are responsible for enforcement. *See, e.g., Mi Familia Vota*, 105 F.4th at 328–29 (governor, attorney general, and local district attorneys all have enforcement responsibility over election integrity laws); *City of Austin v. Paxton*, 943 F.3d 993, 993 (5th Cir. 2019) (governor, attorney general, and workforce commission have different interrelated authority over housing law); *Tex. All.*, 28 F.4th at 670 (secretary of state sued over voting laws enforced by other branches of government). Here, there is one statute, and it expressly directs the Governor—and only the Governor—to appoint individuals to the Medical Board on the basis of race. It’s not confusing. It’s not even disputed.

None of this Court’s cases holding that various defendants were improper have anything to do with a proper official disavowing his legally mandated obligation to enforce state law. That is not—and has never been—a recognized defense to a Section 1983 suit. The Governor’s attempt to shoehorn his disavowal into that exception fails as a matter of law. Accepting the Governor’s theory would allow state officials to place unconstitutional statutes beyond judicial review indefinitely—neither enforced nor repealed, but immune from challenge whenever an official professes noncompliance. Governor Landry is the proper *Ex parte Young* defendant in this case.

### **III. This Case Is Not Moot<sup>4</sup>**

“Mootness is ‘the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).’” *Env’t Conservation Org. v. City of Dallas*, 529 F.3d 519, 524–25 (5th Cir. 2008) (citing *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006)). Governor Landry’s nonbinding declaration and promise not

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<sup>4</sup> In the district court, Governor Landry additionally sought dismissal on the grounds that his declaration moots the case, but the district court did not address the argument in its order of dismissal. *See* ROA.311–15.

to enforce the Racial Mandate does not moot this case. Consequently, Do No Harm continues to experience a constitutional injury and has a “cognizable interest in the outcome” as a result. *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

As a matter of law, the Governor’s argument that his nonbinding declaration moots this case sounds in voluntary cessation. But “voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982). And the Governor’s declaration here fails for the same reason voluntary cessation arguments almost always fail: to show mootness, a government defendant has a “heavy burden” to make “it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Laidlaw*, 528 U.S. at 189 (quoting *Concentrated Phosphate*, 393 U.S. at 203). That burden is typically met by repealing or amending the challenged law—not by a single official’s assurance of present nonenforcement.<sup>5</sup> The Governor does not come close to meeting his burden here.

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<sup>5</sup> Where the government repeals a challenged law, there is a presumption that the challenged conduct is unlikely to recur. See *Freedom from Religion Found., Inc. v. Abbott*, 58 F.4th 824, 833 (5th Cir. 2023). Here,

While Do No Harm appreciates Governor Landry’s nonbinding declaration stating that he will not enforce La. Stat. Ann. § 37:1263(B)(2)–(3), (7)–(8), in a racially discriminatory manner, *see* ROA.103, that does not render an active statute moot. The Governor is sued in his official capacity. ROA.11. The original defendant in this case was Governor John Bel Edwards. ROA.11. Upon Governor Landry’s successor taking office, the future governor will be bound to enforce the racially discriminatory aspects of La. Stat. § 37:1263(B) regardless of Governor Landry’s declaration. As a result, any claim that the discrimination enshrined in the Racial Mandate “could not reasonably be expected to recur” is plainly wrong. *See Laidlaw*, 528 U.S. at 189. *See also Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024) (case moot when defendant shows there is “no reasonable expectation” that it will continue challenged actions). To the contrary, it is mandated by law to recur.

Given the record in this case demonstrating past enforcement of the Racial Mandate, and the continued existence of the statute, future

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of course, there is no repeal. Accordingly, Governor Landry continues to bear the “heavy burden” of showing mootness.

enforcement is likely to recur. Several documents produced in discovery show that Governor Edwards’ administration considered race in seeking out candidates for seats on the Board of Medical Examiners. ROA.170–183. Thus, the only action that could effectively moot this case is legislative repeal—not a single governor’s promise not to enforce the statute. *See McCorvey v. Hill*, 385 F.3d 846, 849 (5th Cir. 2004) (“Suits regarding the constitutionality of statutes become moot once the statute is repealed.”).

Because the statute remains in force and binds the office of the Governor, recurrence is not merely possible—it is legally mandated absent judicial relief. Governor Landry’s declaration does not have the force of law and cannot bind future governors. Unless this Court reverses and orders the racially discriminatory aspects of section 37:1263(B)(2)–(3), (7)–(8) enjoined and declared unconstitutional, future governors—and even Governor Landry—are required by Louisiana law to discriminate on the basis of race. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (moratorium on chokeholds by police did not moot challenge to such practices where “the moratorium by its terms is not permanent.”); *Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir.

2020) (case not mooted by university’s changes to challenged policy because of “the continuing existence of the unaltered definition” of term at issue in amended policy); *Tucker v. Gaddis*, 40 F.4th 289, 293 (5th Cir. 2022) (“far from clear that the government has ceased the challenged conduct . . . with the permanence required under” governing mootness analysis).

To be clear, Do No Harm does not question Governor Landry’s sincerity, but given that his declaration does nothing to remove the challenged statute from Louisiana law today or bind governors in the future, a live controversy remains. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (case not moot where legality of practices challenged and defendant “is free to return to his old ways” even if he has voluntarily stopped practices for time being).

This case is unlike the typical mootness case in which a government repeals official policy and claims the case is moot. For example, in *Freedom from Religion Foundation*, the case was moot after the Texas State Preservation Board repealed a rule under which an exhibit was denied for display in the Capitol. 58 F.4th at 828, 833. And in *Sossamon v. Lone Star State of Texas*, the Texas Department of Criminal Justice

revised its policy in response to the complaint made in the case. 560 F.3d 316, 322, 325 (5th Cir. 2009); *see also Stauffer v. Gearhart*, 741 F.3d 574, 582 (5th Cir. 2014) (same). Because this case challenges the constitutionality of a state statute rather than a mere policy of the government that officials can effectively repeal without the need for legislative action, Governor Landry’s declaration does nothing to moot the controversy.

Should this Court hold that Governor Landry is not the proper defendant based solely on his declaration, it would completely undercut the “voluntary cessation” doctrine. If government officials could simply disavow enforcement and invoke sovereign immunity, there would no longer be “a heavy burden” to show unlikelihood of future enforcement. *See Laidlaw*, 528 U.S. at 189 (quoting *Concentrated Phosphate*, 393 U.S. at 203). There would be no burden at all.

If a Governor’s litigation promise were enough to moot a constitutional challenge, then no unconstitutional statute would ever need to be repealed—only temporarily disavowed until the courthouse doors close. Sovereign immunity isn’t a cheat code that allows such gamesmanship.

#### IV. The Racial Mandate Is Unconstitutional

In dismissing Do No Harm's complaint, the district court did not address the merits of the equal protection claim in this case. But in opposition to Do No Harm's summary judgment motion, Governor Landry conceded that the Racial Mandate is unconstitutional. *See* Dkt. No. 39. In fact, the very basis for Governor Landry's declaration is the Governor's agreement that the Racial Mandate cannot be enforced. ROA.104. As a result, should this Court reverse the dismissal, "there is little sense in declining to address the merits and remanding for further proceedings." *Tex. Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 206 (5th Cir. 2010). *See also Baker v. Bell*, 630 F.2d 1046, 1056 (5th Cir. 1980) ("[T]here are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt . . . or where 'injustice might otherwise result.'") (citing *Hormel v. Helvering*, 312 U.S. 552, 557 (1941)). Thus, because of the Governor's concession of the merits, this Court should simply remand the case to the district court with instructions to enter summary judgment in Do No Harm's favor.



Alternatively, should this Court prefer to separately analyze the constitutional question, the Racial Mandate cannot be upheld. “[R]acial discrimination is invidious in all contexts” and the “core purpose” of the Equal Protection Clause is “do[ing] away with all governmentally imposed discrimination based on race.” *SFFA*, 600 U.S. at 206, 214 (2023) (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991)). Race-based classifications are presumptively unconstitutional and can only be overcome if the government satisfies the “daunting two-step examination” of strict scrutiny. *SFFA*, 600 U.S. at 206.

Under strict scrutiny, Governor Landry must first demonstrate that the Racial Mandate is used to “further compelling governmental interests.” *Id.* at 206–07 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003)). Second, he must show that the “use of race is ‘narrowly tailored’—meaning ‘necessary’—to achieve that interest.” *Id.* at 207 (quoting *Fisher v. Univ. of Tex. at Aus.*, 570 U.S. 297, 311–12 (2013)). Governor Landry can make no such showing—the Racial Mandate fails both prongs of the test.

**A. The racial mandate does not further a compelling governmental interest**

The government is required to establish a compelling interest for engaging in race-conscious actions because it “assur[es] that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality op.). “Acceptance of race-based state action is rare for a reason: ‘[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.’” *SFFA*, 600 U.S. at 208 (citing *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)).

Governor Landry has not identified any compelling governmental interest for the Racial Mandate. Section 37:1263(B)(2)–(3), (7)–(8) expressly requires the Governor to make race-based appointments to the Medical Board, and the only interest Governor Landry has identified is ensuring that “all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board.” ROA.234–35, 241–42. Alongside this interest, Governor Landry also suggests that “membership in a racial minority group increases the likelihood that a person will speak with

concern about the welfare of that group.” ROA.236. These are not compelling interests.

After *Students for Fair Admissions*, only two compelling interests justify race-based government action: (1) “remediating specific, identified instances of past discrimination that violated the Constitution or a statute,” or (2) avoiding imminent risk of riots in a prison. *SFFA*, 600 U.S. at 207. The latter does not apply to this case and Governor Landry does not claim the former—nor could he.

The Governor cannot demonstrate that the Racial Mandate alleviates past discrimination because he has not: (1) shown that it targets “a specific episode of past discrimination;” (2) provided “evidence of intentional discrimination” in past appointments to the Medical Board; and (3) shown that the government “had a hand in the past discrimination it now seeks to remedy.” *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) (summarizing U.S. Supreme Court precedents). A “searching judicial inquiry” into Governor Landry’s justification reveals a record deplete of the evidence necessary to support that justification. *Croson*, 488 U.S. at 493.

Governor Landry and the legislative record are silent as to any evidence of Louisiana governors discriminating against racial minorities in appointments to the Medical Board or any other state board or commission; rather, the legislative record reveals a desire to racially balance the Medical Board in order to increase “minority representation.” *See supra* at 6-8. The sponsor of the legislation, Representative Jackson, detailed how she was contacted by minority physicians who complained about the lack of minority representation on the Medical Board and emphasized how the legislation would help change the composition of the Board to reflect the diversity of the state’s physicians—a view echoed by Senator Barrow. *See supra* at 6-7; Video Recording of the Senate Health and Welfare Committee at 1:34:58 (Apr. 25, 2018); Video Recording of Senate proceedings at 1:40:40 (May 9, 2018). *See also* ROA.104 (Defendant does not identify the Legislature’s goals in his declaration but notes that “while the goal . . . may well have been laudable or well-intended,” he views the appointments of officials on the basis of race to be “constitutionally impermissible.”).

Apart from these discussions of diversity objectives, there is no mention of any racial disparities caused by discrimination, nor any other

alleged governmental interest that could satisfy the demands of strict scrutiny. But even if Governor Landry could point to racial disparities in appointments to the Medical Board, “evidence of mere statistical disparities has been firmly rejected as insufficient by the Supreme Court.” *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 736 (6th Cir. 2000) (citing *Croson*, 488 U.S. at 501–02). Similarly, an effort to alleviate the effects of “societal discrimination” is not a compelling interest. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996). *See also Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (noting that the Court has never approved of a classification that “aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals” in the absence of specific findings of constitutional or statutory violations); *Palmore*, 466 U.S. at 432 (“[c]lassifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns”).

### **B. The racial mandate is not narrowly tailored**

Even assuming Governor Landry could establish a compelling governmental interest to justify the Racial Mandate—which he cannot—it must still be “narrowly tailored” to that interest. To survive strict

scrutiny, the remedy must also “fit” the compelling goal “so closely” that there is “little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.” *Croson*, 488 U.S. at 493. Moreover, the government must show “serious, good faith consideration of workable race-neutral alternatives.” *Grutter*, 539 U.S. at 339; *Croson*, 488 U.S. at 507. Courts must strike down race-based programs unless it is “satisfied that no workable race-neutral alternative” would achieve the compelling interest. *Fisher*, 570 U.S. at 312. Further, a policy is not narrowly tailored if it is either overbroad or underinclusive in its use of racial classifications, *Croson*, 488 U.S. at 507–08; *Gratz v. Bollinger*, 539 U.S. 244, 273–75 (2003), and it must have an end point. *SFFA*, 600 U.S. at 225. The Racial Mandate fails to satisfy all of these factors and is not narrowly tailored as a result.

**First.** The Racial Mandate itself does not identify a specific racial group. § 37:1263(B)(2)–(3), (7)–(8) (“at least every other member [appointed to the Board] . . . shall be a minority appointee . . .”); ROA.104 (“The term ‘minority’ as commonly understood in the context of in the distribution and benefits of government connotes race, national origin, or minority status . . .”). By lumping together all “minorities,” the

government may be providing preference “where there has been no discrimination”—this “overinclusiveness” undermines narrow tailoring. *See Drabik*, 214 F.3d at 737 (citing *Croson*, 488 U.S. at 506). In other words, Governor Landry could satisfy the Racial Mandate by appointing members of minority groups that have never experienced discrimination in seeking appointment to the Medical Board. This result “suggests”—if not conclusively establishes—that the purpose behind the Racial Mandate “was not in fact to remedy past discrimination” against members of an identified group. *Croson*, 488 U.S. at 506.

**Second.** Remedial measures must be time-limited, but the Racial Mandate has remained in place since 2018 and is, in fact, perpetual. *See SFFA*, 600 U.S. at 212 (racially conscious government programs must have a “logical end point.”) (quoting *Grutter*, 539 U.S. at 342). *See also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 238 (1995) (race-conscious programs must “not last longer than the discriminatory effects [they are] designed to eliminate.”).

**Third.** Neither Governor Landry nor the legislative record provide any evidence of “good faith” consideration of race-neutral alternatives. *See Grutter*, 539 U.S. at 339; ROA.234–35. Narrow tailoring ordinarily

requires that the legislature has “carefully examined and rejected race-neutral alternatives.” *Croson*, 488 U.S. at 507. No such examination occurred here—Louisiana simply adopted a race-based solution without further consideration. *See Drabik*, 214 F.3d at 738 (no narrow tailoring where record “contains no evidence ‘that the [legislature] gave any consideration to the use of race-neutral means . . . before resorting to race-based quotas.’”).

**Fourth.** The Racial Mandate imposes significant burdens on the rights of third parties because it bans members from other racial groups from applying for certain seats depending on the racial makeup of the board—it also requires the Louisiana State University Health Sciences Centers at New Orleans and Shreveport, as well as the Louisiana Hospital Association, to submit recommendation lists to the Governor that factor in the Racial Mandate. § 37:1263(B)(2)–(3), (7)–(8). “No federal court has deemed the burden imposed by a rigid quota reasonable or insignificant where the asserted goal of the program was no more than racial and gender diversity for its own sake.” *Mallory v. Harkness*, 895 F. Supp. 1556, 1562 (S.D. Fla. 1995). *See also Wymore v. City of Cedar Rapids*, 635 F.Supp.3d 706, 718 (N.D. Iowa 2022) (“There is no evidence



having a specific proportion of People of Color on every Board will serve those interests more than would a composition of random race proportions.”).

Governor Landry cannot show that the Racial Mandate furthers a compelling interest, and because it is not sufficiently tailored, it fails to meet the high demands of strict scrutiny and is unconstitutional.

### CONCLUSION

Because Governor Landry is the proper defendant and this case is not moot, this Court should reverse the district court’s dismissal of the complaint and remand with instructions to enter summary judgment in favor of Do No Harm.

DATED: December 22, 2025

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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

s/ Caleb R. Trotter  
CALEB R. TROTTER  
*Attorney for Appellant*

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Dated: December 22, 2025.

s/ Caleb R. Trotter  
CALEB R. TROTTER  
*Attorney for Appellant*

No. 25-30568

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Do No Harm, a nonprofit corporation incorporated in the  
State of Virginia,

Plaintiff – Appellant,

v.

Jeff Landry, in his official capacity as the Governor for the State of  
Louisiana as successor in office to Governor John Bel Edwards,

Defendant – Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana, Shreveport Division  
No. 5:24-cv-00016-JE-MLH (Hon. Jerry Edwards, Jr.)

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**RECORD EXCERPTS**

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**TAB 1**  
**District Court Docket**

CLOSED, APPEAL

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**U.S. District Court  
Western District of Louisiana (Shreveport)  
CIVIL DOCKET FOR CASE #: 5:24-cv-00016-JE-MLH  
Internal Use Only**

Do No Harm v. Edwards  
Assigned to: Judge Jerry Edwards, Jr  
Referred to: Magistrate Judge Mark L Hornsby  
Case in other court: 5CCA, 25-30568  
Cause: 42:1983 Civil Rights Act

Date Filed: 01/04/2024  
Date Terminated: 09/29/2025  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Do No Harm**

*a nonprofit corporation incorporated in the  
State of Virginia*

represented by **James Baehr**

Law Office of James Baehr  
609 Metairie Rd #8162  
Metairie, LA 70005  
504-475-8407  
Email: [james@baehr.law](mailto:james@baehr.law)  
*TERMINATED: 10/08/2025*  
*LEAD ATTORNEY*

**Caleb R Trotter**

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*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Laura M D'agostino**

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V.

**Defendant**

**John Bel Edwards**

*in his official capacity as Governor of  
Louisiana*

represented by **Carey T Jones**

LA Atty General's Office (BR)  
1885 N Third St

TERMINATED: 02/28/2024

Baton Rouge, LA 70802  
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 Fax: 225-326-6096  
 Email: [jonescar@ag.louisiana.gov](mailto:jonescar@ag.louisiana.gov)  
 TERMINATED: 02/28/2024

**Defendant****Jeff Landry**

*in his official capacity as the Governor for  
 the State of Louisiana as successor in office  
 to Governor John Bel Edwards*

represented by **Carey T Jones**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Amanda Marie LaGroue**  
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**ATTORNEY TO BE NOTICED**

Email to Active Attorneys' Primary Addresses

Email to All Attorneys' Primary Addresses

Email to Casewide NEF Recipients

Date Filed	#	Docket Text
01/04/2024	<u>1 (p.9)</u>	COMPLAINT against John Bel Edwards (Filing fee \$405, receipt number ALAWDC-5810327) filed by Do No Harm. (Attachments: # <u>1 (p.9)</u> Civil cover sheet, # <u>2 (p.19)</u> Proposed summons/writ)(Attorney James Baehr added to party Do No Harm(pty:pla))(aty,Baehr, James) Modified docket text on 1/8/2024 (Whitener, M). (Entered: 01/04/2024), (QC'ed on 01/08/2024, by Whitener , M)
01/04/2024	<u>2 (p.19)</u>	CORPORATE DISCLOSURE STATEMENT by Do No Harm. (aty,Baehr, James) (Entered: 01/04/2024), (QC'ed on 01/05/2024, by Thomas , T)
01/04/2024		CASE Assigned to District Judge Jerry Edwards, Jr and Magistrate Judge Mark L Hornsby. Motions referred to Magistrate Judge Mark L Hornsby. (crt,Whitener, M) (Entered: 01/08/2024)
01/05/2024	<u>3 (p.21)</u>	MOTION for Laura D'Agostino to Appear Pro Hac Vice (Admission fee: \$105, receipt number ALAWDC-5811681) by Do No Harm. Motion Ripe Deadline set for 1/5/2024. (Attachments: # <u>1 (p.9)</u> Certificate of good standing, # <u>2 (p.19)</u> Proposed order)(aty,Baehr, James) (Entered: 01/05/2024), (QC'ed on 01/08/2024, by Whitener , M)
01/05/2024	<u>4 (p.26)</u>	MOTION for Caleb Trotter to Appear Pro Hac Vice (Admission fee: \$105, receipt number ALAWDC-5811707) by Do No Harm. Motion Ripe Deadline set for 1/5/2024. (Attachments: # <u>1 (p.9)</u> Certificate of good standing, # <u>2</u>



		(p.19) Proposed order)(aty,Baehr, James) (Entered: 01/05/2024), (QC'ed on 01/08/2024, by Whitener , M)
01/08/2024	<u>5 (p.31)</u>	SUMMONS ISSUED as to John Bel Edwards. (crt,Whitener, M) (Entered: 01/08/2024)
01/09/2024	6	ELECTRONIC JURISDICTIONAL REVIEW FINDING: Having reviewed the pleadings, and any amended pleadings, the court finds that subject matter jurisdiction exists pursuant to: 28 U.S.C. section 1331. This finding is preliminary and may be reconsidered sua sponte or on appropriate motion. Signed by Magistrate Judge Mark L Hornsby on 1/9/2024. (crt,Rider, M) (Entered: 01/09/2024), (QC'ed on 01/10/2024, by Keller , J)
01/09/2024	<u>7 (p.37)</u>	ORDER granting <u>3 (p.21)</u> Motion to Appear Pro Hac Vice for appearance of Laura M D'agostino for Do No Harm. Signed by Magistrate Judge Mark L Hornsby on 1/9/2024. (crt,Chavis, J) (Entered: 01/10/2024)
01/09/2024	<u>8 (p.38)</u>	ORDER granting <u>4 (p.26)</u> Motion to Appear Pro Hac Vice for appearance of Caleb R Trotter for Do No Harm. Signed by Magistrate Judge Mark L Hornsby on 1/9/2024. (crt,Chavis, J) (Entered: 01/10/2024)
01/16/2024	<u>9 (p.39)</u>	SUMMONS Re turned Executed by Do No Harm. John Bel Edwards served on 01/10/2024,answer due 01/31/2024. (aty,D'agostino, Laura) Modified docket text to add answer due date on 1/16/2024 (Chavis, J). (Entered: 01/16/2024), (QC'ed on 01/16/2024, by Chavis , J)
01/30/2024	<u>10 (p.41)</u>	MOTION for Extension of Time to File Answer re <u>1 (p.9)</u> Complaint, by All Defendants. Motions referred to Mark L Hornsby. Motion Ripe Deadline set for 1/30/2024. (Attachments: # <u>1 (p.9)</u> Proposed order Order granting motion for extension of time)(Attorney Carey T Jones added to party John Bel Edwards(pty:dft))(aty,Jones, Carey) (Entered: 01/30/2024), (QC'ed on 01/31/2024, by Chavis , J)
02/01/2024	<u>11 (p.45)</u>	ORDER granting <u>10 (p.41)</u> Motion for Extension of Time to Answer re <u>10 (p.41)</u> MOTION for Extension of Time to File Answer re <u>1 (p.9)</u> Complaint, . John Bel Edwards answer due 2/21/2024. Signed by Magistrate Judge Mark L Hornsby on 2/1/2024. (crt,Chavis, J) (Entered: 02/02/2024)
02/28/2024	<u>12 (p.46)</u>	ANSWER to <u>1 (p.9)</u> Complaint, by John Bel Edwards.(aty,Jones, Carey) (Entered: 02/28/2024), (QC'ed on 02/28/2024, by Chavis , J)
02/28/2024		(Court only) ***Party Jeff Landry and Jeff Landry added. Party John Bel Edwards (in his official capacity as Governor of Louisiana) terminated., ***Attorney added: Carey T Jones for Jeff Landry. Attorney Carey T Jones terminated. (crt,Chavis, J) (Entered: 02/28/2024)

02/29/2024	<u>13 (p.52)</u>	ORDER: Scheduling Conference set for 4/11/2024 11:00 AM by phone before Magistrate Judge Mark L Hornsby. Rule 26 Conference between parties to take place before 3/28/2024. Initial Disclosures exchanged by 4/4/2024. Rule 26 Report due by 4/4/2024. Signed by Magistrate Judge Mark L Hornsby on 2/29/2024. (crt,Keller, J) (Entered: 02/29/2024)
04/03/2024	<u>14 (p.53)</u>	Joint RULE 26(f) Report by Do No Harm, Jeff Landry . (aty,Trotter, Caleb) Modified filer on 4/3/2024 (Chavis, J). (Entered: 04/03/2024), (QC'ed on 04/03/2024, by Chavis , J)
04/11/2024	15	MINUTES for proceedings held before Magistrate Judge Mark L Hornsby: SCHEDULING CONFERENCE held on 4/11/2024. (crt,Keller, J) (Entered: 04/11/2024)
04/11/2024	16	NOTICE of Availability of Magistrate Judges By Consent. If you wish to proceed before the magistrate judge, please complete and return the appropriate form located on this court's website by clicking <a href="#">here</a> . Executed consent forms must be emailed to lawdml_consents@lawd.uscourts.gov. <b>DO NOT</b> return the form to the judges. (crt,Keller, J) (Entered: 04/11/2024)
04/11/2024	<u>17 (p.57)</u>	<b>**VACATED**</b> SCHEDULING ORDER: Bench Trial set for 5/5/2025 09:00 AM in Shreveport, Courtroom 2 before Judge Jerry Edwards Jr. Pretrial Conference set for 4/2/2025 10:30 AM in chambers before Judge Jerry Edwards Jr. Pretrial Order due by 3/26/2025. Joinder of Parties and Amendment of Pleadings due by 5/1/2024. Witness List due by 6/11/2024. Plaintiffs Expert Info/Reports due by 8/11/2024. Defendants Expert Info/Reports due by 9/11/2024. Discovery deadline 8/11/2024. Expert Depositions due by 12/11/2024. Dispositive Motions due by 1/30/2025. Daubert Motions due by 1/9/2025. Proposed Pretrial Order inserts and exhibits exchanged by 2/19/2025. Conference/Meeting of counsel to prepare pretrial order to be held by 3/5/2025. Motions in Limine due by 3/19/2025. Trial Depositions due by 4/14/2025. Trial Brief/Pretrial Submissions due by 4/28/2005.Defendants witness list is due seven(7) days after receipt of plaintiffs list. Signed by Magistrate Judge Mark L Hornsby on 4/11/2024. (crt,Roaix, G) Modified on 3/17/2025 to place vacated in front of the entry. See Order 41 (Roaix, G). (Entered: 04/11/2024)
04/11/2024		ADMINISTRATIVE ENTRY Set/Reset Hearings: Bench Trial set for 5/5/2025 09:00 AM in Shreveport, Courtroom 2 before Judge Jerry Edwards Jr. (crt,Roaix, G) (Entered: 04/30/2024)
04/30/2024	<u>18 (p.64)</u>	MOTION for Amanda LaGroue to Enroll as Counsel by Jeff Landry. Motions referred to Mark L Hornsby. Motion Ripe Deadline set for 4/30/2024. (Attachments: # <u>1 (p.9)</u> )

		Proposed order Order Enrolling Amanda LaGroue)(aty,Jones, Carey) (Entered: 04/30/2024), (QC'ed on 04/30/2024, by Chavis , J)
05/01/2024	<u>19 (p.67)</u>	ORDER granting <u>18 (p.64)</u> Motion to Enroll as Counsel. Added as counsel Amanda Marie LaGroue for Jeff Landry. Signed by Magistrate Judge Mark L Hornsby on 5/1/2024. (crt,Chavis, J) (Entered: 05/01/2024)
08/09/2024	<u>20 (p.68)</u>	MOTION to Compel <i>Discovery Responses</i> , MOTION for Attorney Fees by Do No Harm. Motions referred to Mark L Hornsby. Motion Ripe Deadline set for 8/9/2024. (Attachments: # <u>1 (p.9)</u> Memorandum / Brief, # <u>2 (p.19)</u> Exhibit A-Defendant's Responses to Plaintiff's First Set of Interrogatories, # <u>3 (p.21)</u> Exhibit B-Defendant's Responses to Plaintiff's First Requests for Production of Documents, # <u>4 (p.26)</u> Proposed order)(aty,Trotter, Caleb). Added MOTION for Attorney Fees on 8/9/2024 (Miletello, A). (Entered: 08/09/2024), (QC'ed on 08/09/2024, by Miletello , A)
08/12/2024	<u>21 (p.94)</u>	NOTICE of Motion Setting regarding: <u>20 (p.68)</u> MOTION to Compel <i>Discovery Responses</i> , MOTION for Attorney Fees. Motions referred to Magistrate Judge Mark L Hornsby. (crt,Keller, J) (Entered: 08/12/2024)
08/26/2024	<u>22 (p.95)</u>	MEMORANDUM in Opposition re <u>20 (p.68)</u> MOTION to Compel <i>Discovery Responses</i> , MOTION for Attorney Fees <i>With Declaration</i> filed by Jeff Landry. (Attachments: # <u>1 (p.9)</u> Affidavit Declaration of Governor Jeff Landry)(aty,Jones, Carey) (Entered: 08/26/2024), (QC'ed on 08/27/2024, by Chavis , J)
09/03/2024	<u>23 (p.107)</u>	REPLY to Response to Motion re <u>20 (p.68)</u> MOTION to Compel <i>Discovery Responses</i> , MOTION for Attorney Fees filed by Do No Harm. (Attachments: # <u>1 (p.9)</u> Exhibit C - Portions of Defendant's Supplemental Document Production)(aty,Trotter, Caleb) (Entered: 09/03/2024), (QC'ed on 09/03/2024, by Chavis , J)
10/31/2024	<u>24 (p.124)</u>	ORDER granting <u>20 (p.68)</u> Motion to Compel; denying <u>20 (p.68)</u> Motion for Attorney Fees. Plaintiff's motion is granted in part as stated in Memorandum Order. Plaintiff's requests for fees and expenses in connection with the motion to compel are denied. Signed by Magistrate Judge Mark L Hornsby on 10/31/2024. (crt,Keller, J) (Entered: 10/31/2024)
11/14/2024	<u>25 (p.126)</u>	APPEAL OF MAGISTRATE JUDGE DECISION to District Judge re <u>24 (p.124)</u> Order on Motion to Compel,, Order on Motion for Attorney Fees, by Jeff Landry. Motions referred to Mark L Hornsby. (Attachments: # <u>1 (p.9)</u> Proposed order Order)(aty,Jones, Carey) Modified to properly capture motion event on 11/14/2024 (Chavis, J). (Entered: 11/14/2024), (QC'ed on 11/14/2024, by Chavis ,

		J)
11/14/2024	<u>26 (p.138)</u>	**VACATED** NOTICE of Motion Setting regarding: <u>25 (p.126)</u> APPEAL OF MAGISTRATE JUDGE DECISION to District Judge. Motions referred to Judge Jerry Edwards, Jr. (crt,Chavis, J) Modified on 11/18/2024 to place vacated in front of the entry. See 27 (Roaix, G). (Entered: 11/18/2024)
11/18/2024	27	ELECTRONIC ORDER The plaintiff's response to <u>25 (p.126)</u> APPEAL OF MAGISTRATE JUDGE DECISION to District Judge is due on or before 11/21/2024. IT IS FURTHER ORDERED that the <u>24 (p.124)</u> Order on Motion to Compel is STAYED until a decision is issued on the appeal. IT IS FURTHER ORDERED that the <u>26 (p.138)</u> Notice of Motion Setting is VACATED. Signed by Judge Jerry Edwards, Jr on 11/18/2024. (crt,Roaix, G) (Entered: 11/18/2024)
11/21/2024	<u>28 (p.139)</u>	RESPONSE to Motion re <u>25 (p.126)</u> APPEAL OF MAGISTRATE JUDGE DECISION to District Judge filed by Do No Harm. (aty,Trotter, Caleb) (Entered: 11/21/2024), (QC'ed on 11/21/2024, by Chavis , J)
11/25/2024	<u>29 (p.145)</u>	MEMORANDUM ORDER re <u>25 (p.126)</u> APPEAL OF MAGISTRATE JUDGE DECISION to District Judge filed by Jeff Landry - IT IS ORDERED that the Governor shall obtain the information and documents requested and supplement his responses to discovery no later than December 17, 2024. Compliance Deadline set for 12/17/2024. Signed by Judge Jerry Edwards, Jr. on 11/25/2024. (crt,Tice, Y) (Entered: 11/25/2024)
11/25/2024		(Court only) ***Motions terminated: <u>25 (p.126)</u> APPEAL OF MAGISTRATE JUDGE DECISION to District Judge filed by Jeff Landry. Reason for termination: See Memorandum Order <u>29 (p.145)</u> (crt,Tice, Y) (Entered: 11/25/2024)
12/20/2024	<u>30 (p.148)</u>	First MOTION to Dismiss for Lack of Jurisdiction by Jeff Landry. (Attachments: # <u>1 (p.9)</u> Memorandum / Brief Memorandum in Support, # <u>2 (p.19)</u> Proposed order Order)(aty,Jones, Carey) (Entered: 12/20/2024), (QC'ed on 12/20/2024, by Chavis , J)
12/20/2024	<u>31 (p.157)</u>	NOTICE of Motion Setting regarding: <u>30 (p.148)</u> First MOTION to Dismiss for Lack of Jurisdiction . Motions referred to Judge James D Cain, Jr. (crt,Chavis, J) (Entered: 12/20/2024)
12/20/2024		Motions Transferred regarding <u>30 (p.148)</u> First MOTION to Dismiss for Lack of Jurisdiction . Motions referred to Judge Jerry Edwards, Jr. (crt,Chavis, J) (Entered: 12/20/2024)
01/02/2025	32	

		ELECTRONIC MINUTE ENTRY: Please note a change to: Hearing Location. Pretrial Conference set for 4/2/2025 10:30 AM by video conference before Judge Jerry Edwards Jr. Signed by Judge Jerry Edwards, Jr on 1/2/2025. (crt,Roaix, G) (Entered: 01/02/2025)
01/10/2025	<u>33 (p.158)</u>	MEMORANDUM in Opposition re <u>30 (p.148)</u> First MOTION to Dismiss for Lack of Jurisdiction filed by Do No Harm. (Attachments: # <u>1 (p.9)</u> Exhibit A - Documents from Defendant's Document Production)(aty,Trotter, Caleb) (Entered: 01/10/2025), (QC'ed on 01/10/2025, by Chavis , J)
01/30/2025	<u>34 (p.184)</u>	MOTION for Summary Judgment by Do No Harm. Motions referred to Mark L Hornsby. (Attachments: # <u>1 (p.9)</u> Memorandum / Brief)(aty,D'agostino, Laura) (Entered: 01/30/2025), (QC'ed on 01/31/2025, by Chavis , J)
01/30/2025	<u>35 (p.215)</u>	STATEMENT of material facts re <u>34 (p.184)</u> MOTION for Summary Judgment filed by Do No Harm. (aty,D'agostino, Laura) (Entered: 01/30/2025), (QC'ed on 01/31/2025, by Chavis , J)
01/30/2025	<u>36 (p.224)</u>	AFFIDAVIT re <u>34 (p.184)</u> MOTION for Summary Judgment of <i>Kristina Rasmussen</i> by Do No Harm. (aty,D'agostino, Laura) (Entered: 01/30/2025), (QC'ed on 01/31/2025, by Chavis , J)
01/30/2025	<u>37 (p.228)</u>	AFFIDAVIT re <u>34 (p.184)</u> MOTION for Summary Judgment of <i>Caleb Trotter</i> by Do No Harm. (Attachments: # <u>1 (p.9)</u> Exhibit 1 - D Responses to P 1st RFA, # <u>2 (p.19)</u> Exhibit 2 - D Responses to P 1st Rgs, # <u>3 (p.21)</u> Exhibit 3 - Current Board List, # <u>4 (p.26)</u> Exhibit 4 - Board Demographic Info, # <u>5 (p.31)</u> Exhibit 5 - Recommendation Letters)(aty,D'agostino, Laura) (Entered: 01/30/2025), (QC'ed on 01/31/2025, by Chavis , J)
01/30/2025	<u>38 (p.279)</u>	NOTICE of Motion Setting regarding: <u>34 (p.184)</u> MOTION for Summary Judgment . Motions referred to Judge Jerry Edwards, Jr. (crt,Chavis, J) (Entered: 01/31/2025)
02/20/2025	<u>39 (p.280)</u>	MEMORANDUM in Opposition re <u>34 (p.184)</u> MOTION for Summary Judgment filed by Jeff Landry. (Attachments: # <u>1 (p.9)</u> Statement of material facts Governor Landry Statement of Material Facts, # <u>2 (p.19)</u> Statement of material facts Opposition to Plaintiff's Statement of Material Facts, # <u>3 (p.21)</u> Exhibit Declaration of Jeff Landry)(aty,Jones, Carey) (Entered: 02/20/2025), (QC'ed on 02/20/2025, by Miletello , A)
02/27/2025	<u>40 (p.302)</u>	REPLY to Response to Motion re <u>34 (p.184)</u> MOTION for Summary Judgment filed by Do No Harm. (aty,D'agostino, Laura) (Entered: 02/27/2025), (QC'ed on 02/28/2025, by Whitener , M)

03/17/2025	41	ELECTRONIC In light of the pending motions, re <u>34 (p.184)</u> MOTION for Summary Judgment filed by Do No Harm and <u>30 (p.148)</u> First MOTION to Dismiss for Lack of Jurisdiction filed by Jeff Landry, the Bench Trial scheduled for May 5, 2025 is CANCELLED. The <u>17 (p.57)</u> Scheduling Order is VACATED. If necessary, a new scheduling will be issued after the pending motions are decided. Signed by Judge Jerry Edwards, Jr on 3/17/2025. (crt,Roaix, G) (Entered: 03/17/2025)
09/29/2025	<u>42 (p.311)</u>	MEMORANDUM ORDER granting <u>30 (p.148)</u> Motion to Dismiss for Lack of Jurisdiction; denying as moot <u>34 (p.184)</u> Motion for Summary Judgment. Signed by Judge Jerry Edwards, Jr on 9/29/2025. (crt,Roaix, G) (Entered: 09/29/2025)
09/30/2025	<u>43 (p.316)</u>	NOTICE OF APPEAL as to <u>42 (p.311)</u> Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion for Summary Judgment by Do No Harm. (Filing fee \$605, receipt number ALAWDC-6409125) (aty,Trotter, Caleb) (Entered: 09/30/2025), (QC'ed on 09/30/2025, by WalkerSld , B)
10/08/2025	<u>44 (p.319)</u>	MOTION to Withdraw James Baehr as Attorney by Do No Harm. Motions referred to Mark L Hornsby. Motion Ripe Deadline set for 10/8/2025. (Attachments: # <u>1 (p.9)</u> Proposed order)(aty,Baehr, James) (Entered: 10/08/2025), (QC'ed on 10/08/2025, by WalkerSld , B)
10/08/2025	<u>45 (p.323)</u>	ORDER granting <u>44 (p.319)</u> Motion to Withdraw as Attorney. Attorney James Baehr is withdrawn as counsel for the plaintiff. Signed by Magistrate Judge Mark L Hornsby on 10/8/2025. (crt,WalkerSld, B) (Entered: 10/08/2025)
10/09/2025	<u>46 (p.324)</u>	APPEAL TRANSCRIPT REQUEST by Do No Harm Transcript Not Required (aty,Trotter, Caleb) (Entered: 10/09/2025), (QC'ed on 10/09/2025, by WalkerSld , B)
10/17/2025		USCA Case Number 25-30568 for <u>43 (p.316)</u> Notice of Appeal filed by Do No Harm. (crt,WalkerSld, B) (Entered: 10/20/2025)
10/17/2025		Set Deadline for Clerk re <u>43 (p.316)</u> Notice of Appeal: Certify Appeal Record (25-30568) by Clerk to COA 11/3/2025. (crt,WalkerSld, B) (Entered: 10/20/2025)

**TAB 2**  
**Notice of Appeal**



**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

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

Plaintiff,

V.

JEFF LANDRY,<sup>1</sup> in his official capacity  
as Governor of Louisiana,

Defendant.

No. 5:24-cv-00016-JE-MLH

**Judge Edwards**  
**Magistrate Judge Hornsby**

## NOTICE OF APPEAL

Notice is hereby given that Do No Harm appeals to the United States Court of Appeals for the Fifth Circuit from the Order (ECF No. 42) entered in this action on September 29, 2025.

DATED: September 30, 2025.

Respectfully submitted,

/s/ James S. C. Baehr

James S. C. Baehr  
La. Bar No. 35431  
*Local Counsel*  
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/s/ Caleb R. Trotter

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Laura M. D'Agostino, Va. Bar No. 91556\*  
*Trial Attorney*  
 PACIFIC LEGAL FOUNDATION  
 3100 Clarendon Boulevard, Suite 1000

<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Governor Jeff Landry is automatically substituted for former governor John Bel Edwards.



### *Attorneys for Plaintiff Do No Harm*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2025, I presented the foregoing document to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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*Counsel for Defendant*

/s/ Caleb R. Trotter

Caleb R. Trotter

**TAB 3**

**Memorandum Order Granting  
Defendant's Motion to Dismiss**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

DO NO HARM

CIVIL ACTION NO. 24-16

VERSUS

JUDGE EDWARDS

JOHN BEL EDWARDS

MAG. JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is a Motion to Dismiss (ECF No. 30), filed by the defendant, Jeff Landry, in his official capacity as the Governor of Louisiana (“Governor Landry”). Also before the Court is a Motion for Summary Judgment (ECF No. 34), filed by the plaintiff, Do No Harm. Both motions are fully briefed. *See* ECF Nos. 33, 39 & 40.

After careful consideration of the parties’ memoranda and the applicable law, the Motion to Dismiss is **GRANTED**, and the Motion for Summary Judgment is **DENIED** as **MOOT**.

**I. BACKGROUND**

In the wake of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), Do No Harm brings the instant suit challenging the consideration of race in appointing members to the Louisiana State Board of Medical Examiners (the “Board”). *See* ECF No. 1; ECF No. 34-1 at 20. More specifically, Do No Harm contends that La. Rev. Stat. § 37:1263(B) is unconstitutional, as it requires a certain number of “minority appointee[s]” to be appointed to the Board. *See* ECF No. 1 at 5. Do No Harm asserts that it has “members who are qualified” but prevented from serving on the Board by this “racial mandate”—unless we enjoin its enforcement. *See id.* at 6.

Governor Landry filed the instant Motion to Dismiss on two bases—both stemming from his Declaration that he would not consider minority status in his appointments to the Board. *See* ECF No. 30; ECF No. 22-1. First, Governor Landry contends that the case should be dismissed as moot because he will not enforce the statute. *See* ECF No. 30-1 at 2–3. Second, he contends that he is not a proper defendant under *Ex parte Young*, 209 U.S. 123 (1908). *See id.* at 4–5. As this case rises and falls on these points, and as the parties’ briefing on summary judgment devolved into re-briefing these issues, the Court will skip ahead and limit its following analysis thereto.

## II. LAW AND ANALYSIS

Because Governor Landry has demonstrated that he will not enforce the challenged statute, *see* ECF No. 22-1, he is not a proper defendant under *Ex Parte Young*, and this suit cannot be maintained.

“Generally, state sovereign immunity precludes suits against state officials in their official capacities.” *Texas Democratic Party v. Abbott*, 961 F.3d 389, 400 (5th Cir. 2020). The legal fiction of *Ex parte Young*, however, provides an “exception to Eleventh Amendment sovereign immunity” in the subset of cases to which it applies. *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019). The exception permits federal courts to enjoin prospective unconstitutional conduct by “individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature.” *Ex parte Young*, 209 U.S. at 155–56.

The *Ex parte Young* exception has three requirements: “(1) A plaintiff must name individual state officials as defendants in their official capacities; (2) the plaintiff must allege an ongoing violation of federal law; and (3) the relief sought must be properly characterized as prospective.” *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 471 (5th Cir. 2020) (*en banc*) (quotation marks and citations omitted). Governor Landry does not dispute that Do No Harm meets these general requirements. Instead, the parties dispute whether Governor Landry is the correct defendant.

To be a proper defendant under *Ex parte Young*, a state official “must have some connection with the enforcement of” the law being challenged. *Ex parte Young*, 209 U.S. at 157. There are “guideposts” to aid the decision. *Texas All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022). 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.* (quotation marks and citation omitted).

As for the first guidepost, it is undisputed that Governor Landry is the only state official who may appoint members of the Board. See ECF No. 30-1 at 4. Nevertheless, “we need not define the outer bounds of [...] *Ex parte Young* [...] today.” *City of Austin*, 943 F.3d at 1000. “Instead, we analyze our other [...] guideposts to confirm our conclusion that [Governor Landry] is not the proper *Ex parte Young* defendant.” *Mi Familia Vota v. Ogg*, 105 F.4th 313, 329 (5th Cir. 2024).

As for the second guidepost, Governor Landry “has taken no action with respect to the [statute] challenged by [Do No Harm].” *Mi Familia Vota*, 105 F.4th at 330. Rather, Governor Landry has declared that he will never appoint Board members on the basis of their race. *See* ECF No. 22-1. “To determine whether an official has demonstrated a willingness to enforce a challenged statute, we consider the prior or contemporaneous affirmative acts of the named official.” *Mi Familia Vota*, 105 F.4th at 330. “This is consistent with *Ex parte Young*’s foundational requirement that a violation of federal law be *ongoing*.” *Id.* (citation omitted). In this context, the Fifth Circuit has found an agreement by the state official not to enforce the challenged statutory provision during the pendency of litigation to be sufficient to escape *Ex Parte Young*’s grasp. *See Mi Familia Vota*, 105 F.4th at 330–31. Here, we have the paramount state official declaring that he will not enforce the challenged statutory provision, *not ever*. Accordingly, the second guidepost demonstrates that Governor Landry is not a proper defendant under *Ex parte Young*.

The third guidepost is somewhat ill-fit to this context, because Governor Landry’s enforcement of the law could only compel or constrain himself—it is not a statute that imposes criminality or liability. Ultimately, “the mere fact that the [state official] *has* the authority to enforce [the challenged statute] cannot be said to ‘constrain’” the party challenging the statute. *City of Austin*, 943 F.3d at 1001 (emphasis in original). As explained above, because Governor Landry “neither enforced the challenged statute [...] nor threatened to do so,” this third guidepost merely bolsters the second guidepost’s instruction—Governor Landry is unsuitable as a defendant. *See Mi Familia Vota*, 105 F.4th at 332–33.


Do No Harm decries this result as the product of “unconstitutional gamesmanship.” See ECF No. 40 at 7, n.3. *Ex Parte Young* gamesmanship is all the rage these days. See *Mi Familia Vota*, 105 F.4th at 333 (explaining that the use of *Ex Parte Young* to find that “no valid officer can be sued to provide relief from constitutional violations” is not absurd, despite plaintiffs’ protests); see also *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 59–62 (2021) (Roberts, C.J., joined by Breyer, Sotomayor, & Kagan, JJ., concurring in the judgment in part and dissenting in part) (explaining that Texas S.B. 8 was crafted to evade judicial review, and succeeded, in part by frustrating *Ex Parte Young*); see also *id.* at 62–73 (Sotomayor, J., joined by Breyer & Kagan, JJ., concurring in the judgment in part and dissenting in part) (explaining same, further). If it’s okay with the Fifth Circuit and the Supreme Court, it’s okay with us. See *id.* Accordingly, the Court finds Governor Landry to be an improper *Ex Parte Young* defendant and otherwise unsusceptible to suit in the present matter. See U.S. Const. amend. 11.

### III. CONCLUSION

For the foregoing reasons,

**IT IS ORDERED** that the Motion to Dismiss (ECF No. 30) is **GRANTED**. This case is **DISMISSED** without prejudice for want of a proper defendant. Accordingly, the Motion for Summary Judgment (ECF No. 39) is **DENIED** as **MOOT**.

**THUS DONE AND SIGNED** this 29th day of September, 2025.

  
\_\_\_\_\_  
JERRY EDWARDS, JR.  
UNITED STATES DISTRICT JUDGE



**TAB 4**  
**Plaintiff's Complaint**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
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,

Defendant.

No. 5:24-cv-00016

**COMPLAINT**

**INTRODUCTION**

1. The Louisiana State Board of Medical Examiners regulates, licenses, and investigates doctors to ensure they meet the high standards of the profession. Physicians serving on the Board are required to have been licensed for at least five years and have resided in Louisiana for no less than six months. There is also one consumer member that sits on the board. Outside of the bona fide qualifications that the statute mandates for both Board positions, in appointing members to the Board, the Governor must consider a factor entirely outside the control of the potential Board members—their race.

2. Such blatant racial discrimination against individuals who could sit on Louisiana’s Board of Medical Examiners serves no legitimate government purpose. It is demeaning and unconstitutional.

3. Plaintiff Do No Harm is an organization of over 6,000 medical professionals, students, and policymakers dedicated to eliminating racial

discrimination in healthcare. Do No Harm has members who are Louisiana physicians as well as members who would qualify for appointment to the consumer slot but for their race. It brings this lawsuit on behalf of itself and its members to ensure that every doctor and qualifying public consumer in Louisiana has the equal right to serve on the Board, and to ensure that the people of Louisiana are regulated by a Board that is not selected on the basis of race.

### **JURISDICTION AND VENUE**

4. This action arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over these federal claims under 28 U.S.C. § 1331 (federal question), and § 1343(a)(3) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred and continue to occur in this district.

### **PARTIES**

6. Plaintiff Do No Harm is a national nonprofit corporation headquartered in Glen Allen, Virginia. It is a membership organization of over 6,000 medical professionals, students, policymakers, and other interested members of the general public. Its mission is to protect healthcare from a radical, divisive, and discriminatory ideology. Do No Harm's membership includes one or more individuals that are licensed physicians actively engaged in the practice of medicine for at least five years,

that have resided in Louisiana for at least six months, and which have not been placed on probation by the Board nor been convicted of any felonies. Do No Harm's membership also includes one or more members that are at least eighteen years of age, have never been convicted of a felony, have resided in Louisiana for more than a year, have never been licensed by any of the licensing boards identified in La. Stat. § 36:259(A), do not have a spouse licensed by a board identified in La. Stat. § 36:259(A), and which do not have and have never had a material financial interest in the healthcare profession.

7. Defendant John Bel Edwards is the Governor of the State of Louisiana. Governor Edwards is required by Louisiana law to make all appointments to the Board of Medical Examiners and to consider the race of potential appointees when making those appointments. La. Stat. § 37:1263(B). Governor Edwards is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **The Board of Medical Examiners**

8. The Board of Medical Examiners was created in 1894 to regulate the practice of medicine in Louisiana.

9. The Board's mission is to protect and improve the health, safety, and welfare of the citizens of Louisiana, and it is responsible for licensing, regulating, and disciplining physicians and allied health professionals in a manner that protects "the rights and privileges of the licensees."

10. The Board is comprised of ten voting members appointed by the Governor and subject to Senate approval. Of these ten seats, nine must be filled by physicians and one by a member of the public.

11. All nine physician members of the Board must be residents of Louisiana for at least six months, licensed and in good standing to engage in the practice of medicine in Louisiana, actively engaged in the practice of medicine, not been convicted of a felony, not been placed on probation by the Board, and have had at least five years of experience in the practice of medicine in Louisiana. La. Stat. § 37:1263(C).

12. In addition to these requirements, the nine physicians are also recruited from varying backgrounds: (a) two must be appointed from a list of names submitted by the Louisiana State Medical Society, with one of these members practicing in a parish or municipality with a population of less than twenty thousand people (La. Stat. § 37:1263(B)(1)); (b) one member appointed from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans (La. Stat. § 37:1263(B)(2)); (c) one member appointed from a list submitted by the Louisiana State University Health Sciences Center at Shreveport (La. Stat. § 37:1263(B)(3)); (d) one member appointed from a list of names submitted by Tulane Medical School (La. Stat. 37:1263(B)(4)); (e) two members appointed from a list submitted by the Louisiana Medical Association (La. Stat. § 37:1263(B)(5)); (f) one member from a list submitted by the Louisiana Academy of Family Practice Physicians (La. Stat.

§ 37:1263(B)(6)); and (g) one member appointed from a list submitted by the Louisiana Hospital Association.

13. The consumer member of the board must be a citizen of the United States, a resident of Louisiana for at least one year immediately prior to appointment, have attained the age of majority, have never been licensed by any of the licensing boards identified in La. Stat. § 36:259(A), not have a spouse that has ever been licensed by a board identified in La. Stat. § 36:259(A), never been convicted of a felony, and not have or ever had a material financial interest in the healthcare profession. La. Stat. § 37:1263(C)(2).

14. In 2018, the Louisiana legislature enacted legislation that directed the Governor to also comply with a racial mandate when making appointments to the Board. La. Stat. § 37:1263(B).

15. Pursuant to this racial mandate, “at least every other member ... shall be a minority appointee” in regard to three of the physician seats as well as the public consumer seat. La. Stat. § 37:1263(B).

16. The legislative record contains no discussion of racial discrimination, statistics, or any other alleged governmental interest that formed the basis for the racial mandate for appointments to the Board.

17. Because of the racial mandates imposed by La. Stat. § 37:1263(B), Governor Edwards must ensure that “at least” two of the seats with a racial mandate are filled by “minority” candidates during the next appointment cycle.

18. Do No Harm has physician and consumer members who are qualified, willing, and able to be appointed to the Board if the racial mandate is enjoined.

19. The racial mandate prevents these members from equal consideration for appointment to the Board.

### **Cause of Action**

#### **La. Stat. § 37:1263(B) Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution**

20. Plaintiff hereby realleges and incorporates by reference the allegations contained in all preceding paragraphs.

21. Under the Fourteenth Amendment to the United States Constitution, “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

22. La. Stat. § 37:1263(B) requires the Governor to consider and make decisions on the basis of the race of potential board members when making appointments to the Board of Medical Examiners.

23. Governmental classifications on the basis of race violate the Equal Protection Clause unless they are narrowly tailored to a compelling governmental interest.

24. The racial mandate in La. Stat. § 37:1263(B) does not serve a compelling governmental interest.

25. The racial mandate in La. Stat. § 37:1263(B) does not remediate any specific instances of racial discrimination that violated the Constitution or statutes.

26. Even if the racial mandate in La. Stat. § 37:1263(B) served a compelling governmental interest, it is not narrowly tailored to remediating past, intentional discrimination.

27. The racial mandate in La. Stat. § 37:1263(B) stereotypes individuals on the basis of race, treats all individuals of different races as fungible, mandates racial quotas, requires racial balancing, has no “good faith exception,” and has no end date.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

1. A declaration that the racial mandate in La. Stat. § 37:1263(B) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
2. A permanent prohibitory injunction forbidding the Governor and his agents from enforcing, or attempting to enforce, the racial mandates in La. Stat. § 37:1263(B);
3. An award of attorneys’ fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
4. Such other relief as the Court deems just and proper.



DATED: January 4, 2024.

Respectfully submitted,

s/ James Baehr

James S. C. Baehr, La. Bar No. 35431

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*Attorneys for Plaintiff*

*\*Pro Hac Vice forthcoming*

**TAB 5**

**Declaration of Defendant Jeff Landry  
in Support of Defendant's Opposition  
to Plaintiff's Motion to Compel  
Discovery**

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,

Defendant.

No.: 5:24-cv-00016-JE-MLH

DECLARATION OF JEFF LANDRY, IN HIS OFFICIAL CAPACITY AS  
GOVERNOR OF THE STATE OF LOUISIANA

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Jeff Landry.
2. I currently hold the office of Governor of the State of Louisiana, having been elected on October 14, 2023, and took office at noon on January 8, 2024.
3. My predecessor in office, John Bel Edwards, served as Louisiana Governor from 2016 until my inauguration in 2024.
4. I am now a defendant in this case by operation of Rule 25(d) of the Federal Rules of Civil Procedure substituting the current officeholder as the successor to the officer named in the original Complaint.
5. I am aware that this suit challenges appointments to the Louisiana State Board of Medical Examiners under La. R.S. 37:1263(B), which requires the

- appointment of minority candidates from a list provided by designated universities, the Louisiana Hospital Association, and a consumer member.
6. The term “minority” as commonly understood in the context of in the distribution and benefits of government connotes race, national origin, or minority status, and the challenged statute in this instance thus mandates the appointment of a member of the Louisiana State Board of Medical Examiners contrary to Title VI and the United States Constitution as prohibited appointments based solely on improper classifications. *See Johnson v. California*, 543 U.S. 499, 505, 125 S. Ct. 1141, 1146, 160 L. Ed. 2d 949 (2005).
  7. While the goal of the legislature in enacting the subject statute may well have been laudable and well-intended, I regard the appointment of officials based upon their race, national origin, or minority status as constitutionally impermissible in light of recent jurisprudence coming out of the United States Supreme Court. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *See also Lewis v. Ascension Par. Sch. Bd.*, 996 F. Supp. 2d 450, 461 (M.D. La. 2014).
  8. Any official action that treats a person differently on account of his race or ethnic origin is inherently suspect and should not be indulged. *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013).

9. Accordingly, 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.
10. Rather, I intend to and will appoint members who I deem best qualified to represent the health care community and who otherwise meet the terms of La. R.S. 37:1263(B).
11. I have no knowledge of and cannot attest to the method of selecting members of the Louisiana State Board of Medical Examiners by John Bel Edwards as my predecessor in office, but to the extent the appointments were based on race, national origin, or minority status I did not participate in or advise in the appointments and will not enforce the subject statute in that regard.
12. To the best of my knowledge, the records of the John Bel Edwards administration that might contain documents or information relating to the appointment of members to the Louisiana State Board of Medical Examiners were boxed and moved to the Louisiana State Archives under the custody and control of the Secretary of State and as such are available to the public, subject to the limitations established by La. R.S. 44:5.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and understanding.

Executed this 26<sup>th</sup> day of August, 2024.

A handwritten signature in black ink, appearing to read "Jeff Landry", written over a horizontal line.

Jeff Landry  
Governor of the State of Louisiana

**TAB 6**  
**Plaintiff's Exhibit A in Support of**  
**Plaintiff's Opposition to Defendant's Motion to Dismiss**

3. Louisiana Hospital Association Nominee – CHOOSE ONE

X Terrie R. Thomas, MD, of Baton Rouge, is an OB-GYN with Associates in Women's Health. She is a Clinical Professor at Tulane University's Obstetrics and Gynecology Department and an Associate Professor for the LSU-Earl K. Long Obstetrics and Gynecology Residency Program. She is a graduate of LSUHSC School of Medicine in New Orleans and completed her residency at LSU School of Medicine in New Orleans. BFD

David J. Houghton, MD, of New Orleans, is a neurologist and the Chief of the Division of Movement Disorders at Ochsner Health System in New Orleans. He is a graduate of the Medical College of Georgia and received a Masters in Public Health in epidemiology at Emory University. He completed his internship and residency in neurology at the Hospital of the University of Pennsylvania in Philadelphia. WMN

David M. Broussard, MD, of Metairie, is an anesthesiologist and the Chair of the Department of Anesthesiology at Ochsner Medical Center. He is a graduate of LSUSHC School of Medicine in New Orleans and completed his residency in anesthesiology at Ochsner Health System – New Orleans. WMN

Lutifat A. Kashimawo, MD, of Harvey, is a pediatrician and the Medical Director of the Pediatric Intensive Care Unit of Ochsner Hospital for Children. She is also an Assistant Professor of Clinical Pediatrics at Tulane School of Medicine. She is a graduate of the University of Ife in Ile-Ife, Nigeria. BFR

Takeisha C. Davis, MD, of New Orleans, is a public health physician and the president and CEO of New Orleans East Hospital. She is also a former Clinical Associate Professor at Tulane University Medical School and former Assistant State Health Officer. She is a graduate of Johns Hopkins University School of Medicine and completed her residency at the University of Texas Southwestern School of Medicine. BFD

makeup

W-5  
B-2  
M-4  
F-3  
D-2  
R-3  
O-2





26-Jul-2018

# BOARDS AND COMMISSIONS

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Appointed by all authorities - Including vacancies

## Medical Examiners, Louisiana State Board of (112)

**Lester W. Johnson, M.D.**

195 Davis Lake Drive  
Rayville, LA 71269-6517

Work: (318) 330-7664

District: 34 - Thompson

Gender: Male

Appointment Date: 07/01/17

Parish: 42 - Richland

Ethnicity: White

Request Date: 05/16/18

Precinct: 12

Party: Other

Confirmation Date: 05/18/18

Congressional: 5

Term Expires: 06/30/21

Abbreviated Seat Information: Appt by Gov; Rep LSMS

Seat Information: Appointed by the Governor; Represents the LA State Medical Society; Member who practices in a parish or municipality with a population of less than twenty thousand people.

**Christy L. Valentine, M.D.**

1485 Tchoupitoulas St., #11318  
New Orleans, LA 70130-1857

Work: (504) 220-7961

District: 5 - Peterson

Gender: Female

Appointment Date: 07/02/18

Parish: 36 - Orleans

Ethnicity: Black

Request Date: Not Available

Precinct: 01

Party: Democrat

Confirmation Date: Not Available

Congressional: 2

Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Rep LMA

Seat Information: Appointed by the Governor; Represents Louisiana Medical Association

**Daniel K. Winstead M.D.**

5348 Bellaire Drive  
New Orleans, LA 70124-1033

Work: (504) 988-5246

District: 4 - Bishop, W.

Gender: Male

Appointment Date: 07/01/17

Parish: 36 - Orleans

Ethnicity: White

Request Date: 05/16/18

Precinct: 18

Party: Republican

Confirmation Date: 05/18/18

Congressional: 1

Term Expires: 06/30/21

Abbreviated Seat Information: Appt by Gov; Rep Tulane Medical School

Seat Information: Appointed by the Governor; Represents Tulane Medical School

### **Restrictions:**

§1263. Louisiana State Board of Medical Examiners; membership; qualifications; appointment; removal; terms

A. The Louisiana State Board of Medical Examiners is hereby created within the Department of Health and Hospitals and is subject to the provisions of R.S. 36:803.

B. Beginning on January 1, 2017, the board shall consist of seven voting members, all appointed by the governor and subject to Senate confirmation as follows:

(1) Two members from a list of names submitted by the Louisiana State Medical Society. One of the members so appointed shall practice in a parish or municipality with a population of less than twenty thousand people.

(2) One member from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans and the Louisiana State University Health Sciences Center at Shreveport.

(3) One member from a list of names submitted by the Tulane Medical School.

(4) Two members from a list submitted by the Louisiana Medical Association.

(5) One member from a list submitted by the Louisiana Academy of Family Practice Physicians.

C. (1) Each physician member of the board shall at the time of appointment:

(a) Be a resident of this state for not less than six months.

(b) Be currently licensed and in good standing to engage in the practice of medicine in this state.

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**BOARDS AND COMMISSIONS**  
 Appointed by all authorities - Including vacancies

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(c) Be actively engaged in the practice of medicine in this state.

(d) Have five years of experience in the practice of medicine in this state after licensure.

(e) Have not been convicted of a felony.

(f) Have not been placed on probation by the board.

(2)(a) The consumer member of the board shall possess all of the following qualifications:

(i) Is a citizen of the United States and has been a resident of Louisiana for at least one year immediately prior to appointment.

(ii) Has attained the age of majority.

(iii) Has never been licensed by any of the licensing boards identified in R.S. 36:259(A), nor shall he have a spouse who has ever been licensed by a board identified in R.S. 36:259(A).

(iv) Has never been convicted of a felony.

(v) Does not have and has never had a material financial interest in the healthcare profession.

(b) The consumer member shall be a full voting member of the board with all rights and privileges conferred on board members, except that the consumer member shall not participate in the grading of individual examinations.

D.(1) The governor shall appoint the members of the board in accordance with other provisions of this Section and the state constitution.

(2) When a vacancy occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, the vacancy shall be filled in the same manner as the original appointment.

(3) Each member of the board appointed to fill a vacancy occurring by death, resignation, inability to act, or other cause, shall serve for the remainder of the term of his predecessor.

E.(1) A board member may be removed upon one or more of the following grounds:

(a) The refusal or inability for any reason to perform his duties as a member of the board in an efficient, responsible, and professional manner.

(b) The misuse of office to obtain personal, pecuniary, or material gain or advantage for himself or another through such office.

(c) The violation of the laws governing the practice of medicine.

(2) Removal of a member of the board shall be in accordance with the Administrative Procedure Act or other applicable laws.

(3) The governor may remove any member of the board for good cause.

F. Except as provided in Paragraph D of this Section, members of the board shall be appointed for a term of four years, beginning on July first of the year in which the appointment is made. No member shall serve more than three consecutive terms.

Acts 1975, No. 350, §1. Amended by Acts 1977, No. 684, §14; Acts 1979, No. 433, §1; Acts 1999, No. 497, §2; Acts 2016, No. 584, §1, eff. August 1, 2016; Acts 2017, No. 162, eff. June 12, 2017; Acts 2018, No. 515.

W	B	M	E	D	R	O
5	2	4	3	2	3	2

**LOUISIANA STATE BOARD OF MEDICAL EXAMINERS**

4 Appointments to Make

**Nominee of the Louisiana State Medical Society**

✓ Roderick V. Clark, M.D., of Lafayette, is a nephrologist with Acadiana Renal Physicians. He would be a reappointment. *WMP*

✓ **Nominee of LSUHSC New Orleans**

J. Kerry Howell, M.D., of Baton Rouge, is a specialist in gastroenterology in private practice. You appointed him to fill an unexpired term on 2/2/17. He was recommended by Rep. Robert Johnson. *WMP*

**Nominee of the Louisiana Medical Association – CHOOSE ONE**

✓ Christy L. Valentine, M.D., of New Orleans, is an internal medicine specialist with Valentine Medical Center. She would be a reappointment. *BFD*

Leonard Weather Jr., M.D., of Shreveport, is an obstetrician/gynecologist in private practice. He was recommended by Greg Tarver. *BMP*

Darrell Robinson, M.D., of Lafayette, is an obstetrician/gynecologist in private practice. *BMN*

**Nominee of the Louisiana Academy of Family Physicians – awaiting submission**

*Makeup*  
*W-2*  
*B-1*  
*M-2*  
*F-1*  
*D-D*  
*R-1*  
*D-2*





**Louisiana State Board of Medical Examiners** – R.S. 37:1263

**1. LSU-New Orleans and LSU-Shreveport Nominees – CHOOSE 1**

• Charles J. “Chuck” Fox III, M.D., of Shreveport, is the chair of the Department of Anesthesiology for LSUHSC Shreveport. He is the vice chair for academics for Tulane’s Department of Anesthesiology, chair of the clinical competency committee for Tulane’s Department of Anesthesiology, the director of pediatric cardiac anesthesiology for Tulane, and the director of perioperative management fellowship for Tulane. Additionally, he has been a professor of anesthesiology with LSU. Dr. Fox served as a Captain with the US Army Medical Reserves from 1990-1997 and as a Major with the US Army Medical Reserves from 1997-1999. He has author credit for over 40 publications. He was recommended by Ed Murray. **WM**

J. Kerry Howell, M.D., of Baton Rouge, is a specialist in Gastroenterology with privileges at Baton Rouge General Medical Center, Our Lady of the Lake, and Woman’s Hospital. He is the head of the Gastroenterology Clinic for LSU Medical Center in Baton Rouge. He has been a clinical instructor of Gastroenterology and Endoscopy with LSU School of Medicine and an Assistant Professor of Medicine with LSU School of Medicine. Dr. Howell served as a Major with the US Air Force from 1969-1971. He was recommended by Rep. Robert Johnson. **WMR**

Juzar Ali, M.D., of New Orleans, is the chief medical officer of LSU Health/LSU Healthcare Network. He is a Russell C. Klein, M.D., LSU Alumni Professor of Medicine, an honorary professor at the Thai Binh Medical University in Vietnam, an adjunct professor at the LSUHSC School of Nursing, a member of the faculty of Tulane Health Science Center Department of Preventative Health, and a guest faculty member at EGE University Chest Unit in Turkey. He has author credit for 35 publications. **WMN**

**2. Tulane Medical School Nominees – CHOOSE 1**

• Daniel K. “Dan” Winstead, M.D., of New Orleans, is a Robert G. Heath Professor of Psychiatry at Tulane and a staff psychiatrist at Tulane. He has previously served as chair of Tulane’s Department of Psychiatry and Neurology, staff psychiatrist with Depaul/Tulane Behavioral Health Center, and medical director for inpatient psychiatric services at Tulane University Medical Center. He served as a major with the medical corps of the US Army from 1973-1976. He has author credit for over 100 publications. **WMR**

Kenneth B. “Bart” Farris, M.D., of New Orleans, is the director of pathology at West Jefferson Medical Center and a partner at Delta Pathology Group. He is a clinical associate professor in both LSU and Tulane’s departments of pathology. He is on the board of governors of the Louisiana State Medical Society. He has author credit for 4 publications. **WMR**

**3. Christy L. Valentine (New Orleans)**

- a. Appointed: 02/14/2014
- b. Expiration date: 01/01/2018
- c. Nominated by Louisiana Medical Association

4. John M. Burdine (Baton Rouge)
  - a. Appointed: 02/14/2014
  - b. Expiration date: 01/01/2018
  - c. Nominated by the LA State Medical Society
5. Roderick V. Clark (Lafayette)
  - a. Appointed: 02/14/2014
  - b. Expiration date: 01/01/2018
  - c. Nominated by the LA State Medical Society
6. Mark H. Dawson (Rayne)
  - a. Appointed: 02/14/2014
  - b. Expiration date: 01/01/2018
  - c. Nominated by the LA Academy of Family Practice Physicians
7. Kweli J. Amusa (Slidell)
  - a. Appointed: 04/17/2015
  - b. Expiration date: 01/01/2019
  - c. Nominated by Louisiana Medical Association

current membership → no one from N. La.

M - 3  
F - 2  
W - 3  
B - 2  
D - 1  
R - 3  
O - 1

Boards and Commissions  
Appointment Checklist

BOARD: LSBME

APPLICANT: Pita Horton, MD  
Prefix: \_\_\_\_\_ Suffix: \_\_\_\_\_

1. ☒ Application e7/27
  - a. Vice: ADD Thank You: \_\_\_\_\_
  - b. Term: 6/30/22 Senator: Gatti
  - c. Seat: LSUTSC Shropshire (minority)
2. ☒ Vetting
  - a. ☒ State Background Check | \_\_\_\_\_ Delayed
  - b. ☒ Google
  - c. ☒ Yahoo!
  - d. ☒ Facebook
  - e. ☒ Twitter
  - f. ☒ LinkedIn
  - g. ☒ YouTube
3. ☒ Letter down to Marie for edits | Date: 7/31
4. ☒ Added to Weekly Senator Call List
5. ☒ Letter of recommendation received
6. ☒ Letter emailed to Ray Wood, Pam Rice, Marie Lively, & Kristy Gary
7. ☒ Letter emailed to Board contact
8. ☒ Hardcopy mailed to Ray
9. ☒ Added to Board Submission List
10. ☒ Press
11. ☒ Commission received from Secretary of State
12. ☒ Commission mailed | Date: 8/21



gov.prod.0022



LA State Board of Medical Examiners (112)

1 Appointment by Governor

Nominated by LA State University Health Sciences Center-  
New Orleans

VACANT (Vice: Kerry J. Howell, M. D., Term: 06/30/22)

Nominations:

Jorge A Martinez, MD, (DWM) In house counsel and director of risk management w/Van Meter & Associates (med mal and health law); Program Director, Combined Emergency Medicine/Internal Medicine Residency Program

Juzar Ali, (OAM) Pulmonary Critical Care specialist. International expert in tuberculosis, diagnosis, education and training. Member of Best Doctors in America and has received two Fulbright Scholar Teaching Grants and Alumni Awards.

Lolie Yu, MD, (OAF) Division Chief, Hematology-Oncology, Dept of Pediatrics; Consultant Physician, Pediatric ER, Children's Hospital NOLA

not yet  
final. will  
let you know  
when I hear  
back from  
someone

H - 1  
B - 3  
W - 5  
R - 3  
D - 3  
O - 3  
F - 4  
M - 5

29-May-2020

# BOARDS AND COMMISSIONS

Page 1 of 3

Appointed by all authorities - Including vacancies

## Medical Examiners, Louisiana State Board of (112)

c/o Vincent A. Culotta, Jr., M.D.  
630 Camp Street  
New Orleans, LA 70130  
(504) 568-6820

Statute: R.S. 37:1263

Number of Members: 7

Senate Confirmation: Yes

Dept./Agency: LDH

Active Board: Yes

Term: 4 yrs

Roderick V. Clark, M.D.

201 Princeton Woods Loop  
Lafayette, LA 70508-6601

District: 23 - Cortez

Parish: 28 - Lafayette

Congressional: 3

Appointment Date: 07/02/18

Request Date: 06/04/19

Confirmation Date: 06/06/19

Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Represents the LSMS

Seat Information: Appointed by the Governor; Represents the LA State Medical Society

Rita Y. Horton, M.D.

765 Parks Road  
Benton, LA 71006

District: 36 - Mills, Robert

Parish: 8 - Bossier

Congressional: 4

Appointment Date: 08/01/18

Request Date: 06/04/19

Confirmation Date: 06/06/19

Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Rep LSUHSC-Shreveport

Seat Information: Appointed by the Governor; Represents the Louisiana State University Health Sciences Center-Shreveport (Minority)

Lester W. Johnson, M.D.

195 Davis Lake Drive  
Rayville, LA 71269-6517

District: 34 - Jackson

Parish: 42 - Richland

Congressional: 5

Appointment Date: 07/01/17

Request Date: 05/16/18

Confirmation Date: 05/18/18

Term Expires: 06/30/21

Abbreviated Seat Information: Appt by Gov; Rep LSMS

Seat Information: Appointed by the Governor; Represents the LA State Medical Society; Member who practices in a parish or municipality with a population of less than twenty thousand people.

Patrick T. O'Neill

6540 Memphis St  
New Orleans, LA 70124-3236

District: 4 - Harris, Jimmy

Parish: 36 - Orleans

Congressional: 1

Appointment Date: 09/13/19

Request Date: 05/28/20

Confirmation Date: Not Available

Term Expires: 06/30/21

Abbreviated Seat Information: Appt by Gov; Rep Tulane Medical School

Seat Information: Appointed by the Governor; Represents Tulane Medical School

Kim S. Sport

21 Muirfield Place  
New Orleans, LA 70131

District: 7 - Carter, Troy

Parish: 36 - Orleans

Congressional: 2

Appointment Date: 07/27/18

Request Date: 06/04/19

Confirmation Date: 06/06/19

Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Consumer Mbr

Seat Information: Appointed by the Governor; Consumer Member (Non-Minority)

James A. Taylor Jr., M. D.

14051 Peairs Road  
Zachary, LA 70791-8405

District: 17 - Ward

Parish: 17 - E. Baton Rouge

Congressional: 6

Appointment Date: 08/01/18

Request Date: 06/04/19

Confirmation Date: 06/06/19

Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Rep LA Academy of Family Practice Physicians

Seat Information: Appointed by the Governor; Represents the LA Academy of Family Practice Physicians

gov.prod.0096

Exhibit A

25-30568.180

29-May-2020

# BOARDS AND COMMISSIONS

Page 2 of 3

Appointed by all authorities - Including vacancies

## Medical Examiners, Louisiana State Board of (112)

Terrie R. Thomas, M.D.  
15850 Woodland Trail  
Baton Rouge, LA 70817

District: 6 - White, B  
Parish: 17 - E. Baton Rouge  
Congressional: 6

Appointment Date: 08/01/18  
Request Date: 06/04/19  
Confirmation Date: 06/06/19  
Term Expires: 06/30/22

DBF

Abbreviated Seat Information: Appt by Gov; Rep LA Hosp Assn

Seat Information: Appointed by the Governor; Represents the Louisiana Hospital Association(Non-Minority)

Christy L. Valentine, M.D.  
1485 Tchoupitoulas St., #11318  
New Orleans, LA 70130-1857

District: 5 - Peterson  
Parish: 36 - Orleans  
Congressional: 2

Appointment Date: 07/02/18  
Request Date: 06/04/19  
Confirmation Date: 06/06/19  
Term Expires: 06/30/22

DBF

Abbreviated Seat Information: Appt by Gov; Rep LMA

Seat Information: Appointed by the Governor; Represents Louisiana Medical Association

Leonard Weather Jr., M.D.  
6041 Wright Road  
New Orleans, LA 70128

District: 3 - Bouie  
Parish: 36 - Orleans  
Congressional: 2

Appointment Date: 09/27/19  
Request Date: 05/28/20  
Confirmation Date: Not Available  
Term Expires: 06/30/23

RBM

Abbreviated Seat Information: Appt by Gov; Rep LMA

Seat Information: Appointed by the Governor; Represents Louisiana Medical Association

Vacant

District: 16 - Foil  
Parish: 17 - E. Baton Rouge  
Congressional: 6

Appointment Date: 07/02/18  
Request Date: 06/04/19  
Confirmation Date: 06/06/19  
Term Expires: 06/30/22

Abbreviated Seat Information: Appt by Gov; Rep LA Univ. Hlth Sciences Ctr-N.O.

Seat Information: Appointed by the Governor; Represents the LA State University Health Sciences Center-New Orleans VACANT DUE TO RESIGNATION 02/18/2020

## Restrictions:

§1263. Louisiana State Board of Medical Examiners; membership; qualifications; appointment; removal; terms

A. The Louisiana State Board of Medical Examiners is hereby created within the Department of Health and Hospitals and is subject to the provisions of R.S. 36:803.

B. Beginning on January 1, 2017, the board shall consist of seven voting members, all appointed by the governor and subject to Senate confirmation as follows:

(1) Two members from a list of names submitted by the Louisiana State Medical Society. One of the members so appointed shall practice in a parish or municipality with a population of less than twenty thousand people.

(2) One member from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans and the Louisiana State University Health Sciences Center at Shreveport.

(3) One member from a list of names submitted by the Tulane Medical School.

(4) Two members from a list submitted by the Louisiana Medical Association.

(5) One member from a list submitted by the Louisiana Academy of Family Practice Physicians.

C. (1) Each physician member of the board shall at the time of appointment:

(a) Be a resident of this state for not less than six months.

(b) Be currently licensed and in good standing to engage in the practice of medicine in this state.

(c) Be actively engaged in the practice of medicine in this state.

(d) Have five years of experience in the practice of medicine in this state after licensure.

(e) Have not been convicted of a felony.

(f) Have not been placed on probation by the board.

gov.prod.0097

Exhibit A

25-30568.181

28-Apr-2020

## BOARDS AND COMMISSIONS

Page 1 of 3

Appointed by all authorities - Including vacancies

Medical Examiners, Louisiana State Board of (112)

c/o Vincent A. Culotta, Jr., M.D.  
630 Camp Street  
New Orleans, LA 70130  
(504) 568-6820

**Statute:** R.S. 37:1263**Dept./Agency:** LDH**Number of Members:** 7**Active Board:** Yes**Senate Confirmation:** Yes**Term:** 4 yrs

**Roderick V. Clark, M.D.**  
201 Princeton Woods Loop  
Lafayette, LA 70508-6601

**District:** 23 - Cortez  
**Parish:** 28 - Lafayette  
**Congressional:** 3

**Appointment Date:** 07/02/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Represents the LSMS**Seat Information:** Appointed by the Governor; Represents the LA State Medical Society

**Rita Y. Horton, M.D.**  
765 Parks Road  
Benton, LA 71006

**District:** 36 - Mills, Robert  
**Parish:** 8 - Bossier  
**Congressional:** 4

**Appointment Date:** 08/01/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Rep LSUHSC-Shreveport**Seat Information:** Appointed by the Governor; Represents the Louisiana State University Health Sciences Center-Shreveport (Minority)

**J. Kerry Howell, M.D.**  
7112 Moniteau Court  
Baton Rouge, LA 70809-1163

**District:** 16 - Foil  
**Parish:** 17 - E. Baton Rouge  
**Congressional:** 6

**Appointment Date:** 07/02/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Rep LA Univ. Hlth Sciences Ctr-N.O.**Seat Information:** Appointed by the Governor; Represents the LA State University Health Sciences Center-New Orleans

**Lester W. Johnson, M.D.**  
195 Davis Lake Drive  
Rayville, LA 71269-6517

**District:** 34 - Jackson  
**Parish:** 42 - Richland  
**Congressional:** 5

**Appointment Date:** 07/01/17  
**Request Date:** 05/16/18  
**Confirmation Date:** 05/18/18  
**Term Expires:** 06/30/21

**Abbreviated Seat Information:** Appt by Gov; Rep LSMS**Seat Information:** Appointed by the Governor; Represents the LA State Medical Society; Member who practices in a parish or municipality with a population of less than twenty thousand people.

**Patrick T. O'Neill**  
6540 Memphis St  
New Orleans, LA 70124-3236

**District:** 4 - Harris, Jimmy  
**Parish:** 36 - Orleans  
**Congressional:** 1

**Appointment Date:** 09/13/19  
**Request Date:** Not Available  
**Confirmation Date:** Not Available  
**Term Expires:** 06/30/21

**Abbreviated Seat Information:** Appt by Gov; Rep Tulane Medical School**Seat Information:** Appointed by the Governor; Represents Tulane Medical School

**Kim S. Sport**  
21 Muirfield Place  
New Orleans, LA 70131

**District:** 7 - Carter, Troy  
**Parish:** 36 - Orleans  
**Congressional:** 2

**Appointment Date:** 07/27/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Consumer Mbr**Seat Information:** Appointed by the Governor; Consumer Member (Non-Minority)



28-Apr-2020

## BOARDS AND COMMISSIONS

Page 2 of 3

Appointed by all authorities - Including vacancies

**Medical Examiners, Louisiana State Board of (112)**

**James A. Taylor Jr., M.D.**  
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Zachary, LA 70791-8405

**District:** 17 - Ward  
**Parish:** 17 - E. Baton Rouge  
**Congressional:** 6

**Appointment Date:** 08/01/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Rep LA Academy of Family Practice Physicians

**Seat Information:** Appointed by the Governor; Represents the LA Academy of Family Practice Physicians

**Terrie R. Thomas, M.D.**  
15850 Woodland Trail  
Baton Rouge, LA 70817

**District:** 6 - White, B  
**Parish:** 17 - E. Baton Rouge  
**Congressional:** 6

**Appointment Date:** 08/01/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Rep LA Hosp Assn

**Seat Information:** Appointed by the Governor; Represents the Louisiana Hospital Association(Non-Minority)

**Christy L. Valentine, M.D.**  
1485 Tchoupitoulas St., #11318  
New Orleans, LA 70130-1857

**District:** 5 - Peterson  
**Parish:** 36 - Orleans  
**Congressional:** 2

**Appointment Date:** 07/02/18  
**Request Date:** 06/04/19  
**Confirmation Date:** 06/06/19  
**Term Expires:** 06/30/22

**Abbreviated Seat Information:** Appt by Gov; Rep LMA

**Seat Information:** Appointed by the Governor; Represents Louisiana Medical Association

**Leonard Weather Jr., M.D.**  
6041 Wright Road  
New Orleans, LA 70128

**District:** 3 - Bouie  
**Parish:** 36 - Orleans  
**Congressional:** 2

**Appointment Date:** 09/27/19  
**Request Date:** Not Available  
**Confirmation Date:** Not Available  
**Term Expires:** 06/30/23

**Abbreviated Seat Information:** Appt by Gov; Rep LMA

**Seat Information:** Appointed by the Governor; Represents Louisiana Medical Association

**Restrictions:**

§1263. Louisiana State Board of Medical Examiners; membership; qualifications; appointment; removal; terms

A. The Louisiana State Board of Medical Examiners is hereby created within the Department of Health and Hospitals and is subject to the provisions of R.S. 36:803.

B. Beginning on January 1, 2017, the board shall consist of seven voting members, all appointed by the governor and subject to Senate confirmation as follows:

(1) Two members from a list of names submitted by the Louisiana State Medical Society. One of the members so appointed shall practice in a parish or municipality with a population of less than twenty thousand people.

(2) One member from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans and the Louisiana State University Health Sciences Center at Shreveport.

(3) One member from a list of names submitted by the Tulane Medical School.

(4) Two members from a list submitted by the Louisiana Medical Association.

(5) One member from a list submitted by the Louisiana Academy of Family Practice Physicians.

C. (1) Each physician member of the board shall at the time of appointment:

(a) Be a resident of this state for not less than six months.

(b) Be currently licensed and in good standing to engage in the practice of medicine in this state.

(c) Be actively engaged in the practice of medicine in this state.

(d) Have five years of experience in the practice of medicine in this state after licensure.

(e) Have not been convicted of a felony.

(f) Have not been placed on probation by the board.

(2)(a) The consumer member of the board shall possess all of the following qualifications:

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Exhibit A

25-30568.183

**TAB 7**

**Declaration of Kristina Rasmussen in Support of  
Plaintiff's Motion for Summary Judgment**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

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

Plaintiff,

v.

JEFF LANDRY, in his official capacity  
as Governor of Louisiana,

Defendant.

No.: 5:24-cv-00016-JE-MLH

**Judge Jerry Edwards Jr.**

**Mag. Judge Mark L. Hornsby**

**DECLARATION OF KRISTINA RASMUSSEN IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, Kristina Rasmussen, declare as follows:

1. I am over the age of 18, of sound mind, and otherwise competent to sign this declaration.

2. I am the Executive Director of Do No Harm.

3. Do No Harm is a national nonprofit corporation headquartered in Glen Allen, Virginia. Do No Harm is a membership organization made up of medical professionals, students, policymakers, and other interested members of the general public. Its mission is to protect healthcare from a radical, divisive, and discriminatory ideology.

4. Defendant Jeffrey Landry is the Governor of the State of Louisiana. Governor Landry is required by Louisiana law to make all appointments to the Louisiana Board of Medical Examiners (Medical Board) and to consider the race of

potential appointees when making those appointments. La. Stat. § 37:1263(B)(2)–(3), (7)–(8). Governor Landry is sued in his official capacity.

5. The racial mandate in La. Stat. § 37:1263(B) stereotypes individuals on the basis of race, treats all individuals of different races as fungible, mandates racial quotas, requires racial balancing, has no “good faith exception,” and has no end date.

6. Do No Harm has physician and consumer members who are qualified, willing, and able to be appointed to the Medical Board if La. Stat. § 37:1263(B)(2)–(3), (7)–(8) is enjoined.

7. Do No Harm’s membership includes one or more individuals who are licensed physicians in good standing, actively engaged in the practice of medicine for at least five years, have resided in Louisiana for at least six months, and have not been placed on probation by the Medical Board nor been convicted of any felonies.

8. Do No Harm’s membership also includes one or more members who are at least eighteen years of age, have never been convicted of a felony, are citizens of the United States, have resided in Louisiana for more than a year, have never been licensed by any of the licensing boards identified in La. Stat. § 36:259(A), which do not have and have never had a material financial interest in the healthcare profession, and do not have a spouse licensed by a board identified in La. Stat. § 36:259(A).

9. Specifically, Do No Harm Member “A” is a licensed psychiatrist in good standing in Louisiana. He is not a member of a racial minority. Member A resides in Louisiana, specializes in Neurology and Psychiatry, and has over 40 years of



experience. Member A is qualified to serve as a physician on the Medical Board because he is actively engaged in the practice of medicine for at least five years, has resided in Louisiana for at least six months, and has not been placed on probation by the Medical Board nor been convicted of any felonies.

10. Do No Harm Member “B” is a citizen of Louisiana that would like to be considered for the “consumer” opening on the Medical Board. He is not a member of a racial minority. He is over eighteen years of age, has never been convicted of a felony, is a citizen of the United States, has resided in Louisiana for more than a year, has never been licensed by any of the licensing boards identified in La. Stat. § 36:259(A), does not have a spouse licensed by a board identified in § 36:259(A), and does not and has never had a material financial interest in the healthcare profession.

11. Do No Harm Member “C” is also a citizen of Louisiana that would like to be considered for the “consumer” opening on the Medical Board. She is not a member of a racial minority. She is over eighteen years of age, has never been convicted of a felony, is a citizen of the United States, has resided in Louisiana for more than a year, has never been licensed by any of the licensing boards identified in La. Stat. § 36:259(A), does not have a spouse licensed by a board identified in § 36:259(A), and does not and has never had a material financial interest in the healthcare profession.

12. Based on my experience and discussions with many individuals, I believe many individuals would not challenge laws like La. Stat. § 37:1263(B) absent the anonymity protections that associations like Do No Harm provide.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2025.

  
Kristina Rasmussen

**TAB 8**  
**Plaintiff's Exhibit 1 in Support**  
**of Motion for Summary**  
**Judgment, Selected Pages**

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,

Defendant.

No.: 5:24-cv-00016-JE-MLH

**PLAINTIFF'S FIRST SET OF  
REQUESTS FOR ADMISSIONS**

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF  
REQUESTS FOR ADMISSIONS

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, the  
defendant responds to the First Set of Requests of Admissions as follows:

**REQUESTS FOR ADMISSIONS**

**Request for Admission No. 1:**

Admit that Plaintiff is a national nonprofit corporation and membership  
organization of medical professionals, students, policymakers, and other interested  
members of the general public.

**RESPONSE:**

Defendant cannot confirm or deny and has no basis to determine the status  
nor composition of the plaintiff.

**Request for Admission No. 2:**

Admit that La. Stat. § 37:1263(B) requires Defendant to consider the race of potential appointees to the Board.

**RESPONSE:**

Admit.

**Request for Admission No. 10:**

Admit that the only interest identified by Defendant that is advanced by the Racial Mandate is to ensure that all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board.

**RESPONSE:**

Admit.

**Request for Admission No. 11:**

Admit that the Racial Mandate does not remedy discrimination against minority applicants to the Board.

**RESPONSE:**

Object to this statement as too imprecise to permit a response.

**Request for Admission No. 12:**

Admit that the legislative record for the 2018 bill (HB 778) that became La. Stat. § 37:1263(B) contains no discussion of racial discrimination or statistics as justification for the racial mandate.

**RESPONSE:**

Admit that there is no direct discussion on the record.

**Request for Admission No. 13:**

Admit that the legislative record for the 2018 bill (HB 778) that became La. Stat. § 37:1263(B) contains no discussion of the legislature reviewing or conducting any racial disparity study as justification for the racial mandate.

**RESPONSE:**

Admit that to defendant's knowledge the record contains no such review.

**Request for Admission No. 14:**

Admit that the legislative record for the 2018 bill (HB 778) that became La. Stat. § 37:1263(B) contains no discussion of the legislature considering documents produced by Defendant (Prod-AG-0008—0018) as justification for the racial mandate.

**RESPONSE:**

Admit that to defendant's knowledge the record contains no such documents. However, the documents are public documents available to any legislator who wishes to review them.

**Request for Admission No. 15:**

Admit that Defendant has not considered or used any race-neutral means to further his identified interest in ensuring that all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board.

**RESPONSE:**

Partly admit, partly deny. The overall design of the statute is meant to balance membership on the board.

**Request for Admission No. 16:**

Admit that a “minority appointee,” as the term is used in La. Stat. § 37:1263(B), means an individual who is a member of a racial minority group.

**RESPONSE:**

Denied. Minority could refer equally to a group or groups that may be differentiated by other than race. This defendant cannot speak to the intent of the legislature in enacting the statute.

**Request for Admission No. 17:**

Admit that simply because someone is a member of a racial minority group does not mean that their individual views serve as a proxy for any other member of that racial minority group.

**RESPONSE:**

Generally admit, but membership in an identifiable increases the likelihood that they will identify with the interest of the group in which they are a member.

**Request for Admission No. 18:**

Admit that simply because someone is a member of a racial minority group does not mean that they speak with one voice for other members of that racial minority group.

**RESPONSE:**

Admit as a general proposition, but membership in a racial minority group increases the likelihood that a person will speak with concern about the welfare of that group.

**TAB 9**  
**Plaintiff's Exhibit 2 in Support**  
**of Motion for Summary**  
**Judgment, Selected Pages**



**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,

Defendant.

No.: 5:24-cv-00016-JE-MLH

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO  
DEFENDANT**

Jeff Landry, in his official capacity as Governor of the State of Louisiana,  
responds to the Plaintiff's First Set of Interrogatories to Defendant, pursuant to the  
Federal Rules of Civil Procedure as follows:

**INTERROGATORIES**

**Interrogatory No. 1:**

Identify all individuals consulted in the preparation of answers to these  
interrogatories, indicating the interrogatory or interrogatories for which they were  
consulted.

**RESPONSE:**

Individuals consulted for responses include Angelique Freel, Executive  
Counsel to the Governor, Jeffrey Wale, Deputy Executive Counsel to the Governor,  
Patricia Wilton, Executive Legal Counsel for the Louisiana Board of Medical  
Examiners.



The interests of the State in enacting the statute challenged in this litigation is to ensure that all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board of Medical Examiners. The state judged that the health and welfare of its citizens would benefit thereby.

**Interrogatory No. 5:**

Identify all factual evidence in your possession or to your knowledge (including, but not limited to, legislative evidence, studies, investigations, interviews, testimony, or complaints) that supports the assertion that the interests identified in Interrogatory No. 4 are advanced by the Racial Mandate. Please provide a brief summary of each such fact or finding and identify supporting documents.

**RESPONSE:**

See the documents attached to Plaintiff's First Set of Request for Production of Documents. The legislature or members thereof were presumably privy to other facts, evidence, opinions, and studies that supported its decision in enacting the challenged statute.

**Interrogatory No. 6:**

Identify all race-neutral means you have considered or used to further the interests you identified in your response to Interrogatory No. 4.

**RESPONSE:**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

s/ Caleb R. Trotter

CALEB R. TROTTER

*Attorney for Appellant*