

No. 25-30568

In the United States Court of Appeals for the Fifth Circuit

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

v.

JEFF LANDRY, in his official capacity as the Governor to the State of
Louisiana as successor in office to Governor John Bel Edwards,
Defendant–Appellee.

On Appeal from the United States District Court
for the Western District of Louisiana
No. 5:24-CV-0016

BRIEF OF DEFENDANT-APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

Under Fifth Circuit Rule 28.2.1, a certificate of interested persons is not required because Defendant-Appellee is a governmental party.

STATEMENT REGARDING ORAL ARGUMENT

Appellee Governor Jeff Landry does not oppose Plaintiff's request for oral argument.

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INTRODUCTION

This case is about jurisdiction. A Virginia-based membership organization seeks a federal court's injunction ordering Louisiana Governor Jeff Landry not to make race-based appointments to the State Board of Medical Examiners—something he has sworn he will never do. Plaintiff concedes the Governor's sincerity but insists that a federal court must nevertheless pass on the underlying statute's constitutionality and enjoin the Governor to do what he is already doing. That insistence does not excuse Plaintiff from overcoming sovereign immunity, establishing standing, or presenting a live case or controversy. The district court correctly dismissed this suit for want of jurisdiction, and this Court should affirm.

Plaintiff Do No Harm sued Governor John Bel Edwards just four days before he left office. On behalf of members allegedly interested in serving on the Board, it challenged statutory provisions enacted in 2018 that require consideration of minority status when filling certain seats. Governor Landry became the sole defendant automatically upon taking office, but he emphatically rejected his predecessor's appointment practices. Consistent with his longstanding opposition to racial

discrimination, he regards race-based appointments as “constitutionally impermissible” and has sworn that he “will not enforce the subject statute in that regard.” ROA.104-105. Plaintiff nevertheless seeks to impute Governor Edwards’s conduct to Governor Landry to secure an injunction against him. Bu that is not how *Ex parte Young* or Article III works.

The district court correctly refused Plaintiff’s request. *Ex parte Young* requires demonstrated willingness to enforce the challenged law, and this Governor has demonstrated the opposite. Article III supplies independent barriers because Plaintiff has not established that any member was able and ready to seek appointment when it sued, and the Governor’s unequivocal commitment moots any otherwise-live controversy. Plaintiff’s agreement with the Governor on the constitutional question supplies no reason to depart from the commonplace jurisdictional rules that foreclose this federal lawsuit. The Court should affirm.

JURISDICTIONAL STATEMENT

Although the district court lacked subject matter jurisdiction, *see infra* Argument Section I, the district court had statutory subject matter

jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. The district court's order granting the Governor's Motion to Dismiss is a final decision over which this Court has appellate jurisdiction under 28 U.S.C. § 1291. The district court's order was entered on September 29, 2025. ROA.315. No separate judgment appears in the record. But that omission does not affect the validity of this appeal. *See* Fed. R. App. P. 4(a)(7)(B); Fed. R. Civ. P. 58(c)(2)(B). And Plaintiff's notice of appeal, filed September 30, 2025, ROA.316, is treated as filed upon entry of judgment, Fed. R. App. P. 4(a)(2). The appeal is timely.

ISSUES PRESENTED

1. Whether sovereign immunity bars this suit against Governor Landry where (a) his appointment authority alone does not establish the enforcement connection required by *Ex parte Young* and (b) he has demonstrated unwillingness to enforce the challenged law, declaring race-based appointments “constitutionally impermissible” and swearing that he “will not enforce the subject statute in that regard.”

2. Whether Article III independently requires dismissal where (a) Plaintiff has not established that any member was able and ready to seek appointment when it sued and (b) Governor Landry's sworn

commitment that he “will not enforce the subject statute” to make race-based appointments “now or in the future” renders any otherwise-live controversy moot.

3. Whether, if this Court reverses the jurisdictional dismissal, it should remand for further proceedings rather than direct entry of judgment on a summary-judgment motion the district court denied as moot.

STATEMENT OF THE CASE

A. The Louisiana State Board of Medical Examiners licenses, regulates, and disciplines physicians and allied health professionals in Louisiana. ROA.11. The Board consists of “ten voting members, all appointed by the governor and subject to Senate confirmation”—nine physicians and one consumer. La. R.S. § 37:1263(B). Physician members must be licensed and in good standing in Louisiana with five years of post-licensure practice here, and must satisfy residency and disciplinary-history requirements. § 37:1263(C)(1). The consumer member must satisfy separate eligibility requirements, including that the member “[h]as never been licensed by any of the licensing boards identified in R.S. 36:259(A)” and “[d]oes not have and has never had a material financial

interest in the healthcare profession.” § 37:1263(C)(2)(a)(iii)–(iv). Members generally serve “a term of four years, beginning on July first of the year in which the appointment is made.” § 37:1263(F). A member appointed to fill an unexpired term serves “for the remainder of the term of his predecessor.” § 37:1263(D)(3).

In 2018, the Legislature enacted Act 599, which expanded the Board and imposed the appointment requirements challenged here. *See* 2018 La. Sess. Law Serv. Act 599 (H.B. 778); ROA.195-96. Those requirements govern the physician seats filled from lists submitted by the Louisiana State University Health Sciences Centers at New Orleans and Shreveport and the Louisiana Hospital Association. La. R.S. § 37:1263(B)(2)–(3), (7). For each of those seats, the statute requires that “[a]t least every other member appointed from a list provided for in this Paragraph shall be a minority appointee,” while permitting “consecutive minority appointments.” *Ibid.* The same rule governs the consumer seat, for which “[a]t least every other consumer member appointed to the board shall be a minority appointee,” again permitting “consecutive minority appointments.” § 37:1263(B)(8). The Governor’s office provides an online Boards and Commissions Application through which applicants may

identify the board or commission on which they seek to serve, including this Board. *See* Office of Governor Jeff Landry, *Boards and Commissions Application*, perma.cc/D7DW-Y6TG; *e.g.*, ROA.253-57.

B. On January 4, 2024—nearly three months after Governor Landry’s election and just four days before he took office—Plaintiff Do No Harm filed this suit against outgoing Governor John Bel Edwards in his official capacity. ROA.9-16; ROA.288. A Virginia-based membership organization, Plaintiff sued “on behalf of itself and its members.” ROA.10. It alleged that unidentified physician and consumer members were “qualified, willing, and able to be appointed to the Board if the racial mandate is enjoined.” ROA.10–11, 14. Asserting a single Equal Protection claim, Plaintiff sought a declaration that the challenged provisions are unconstitutional, an injunction “forbidding the Governor and his agents from enforcing, or attempting to enforce,” those provisions, and attorneys’ fees under 42 U.S.C. § 1988. ROA.14-15. Discovery produced appointment materials from Governor Edwards’s administration identifying candidates’ race and tracking the Board’s racial composition. ROA.170-83. Nothing in the record shows anything comparable under Governor Landry.

Governor Landry took office on January 8, 2024, and automatically succeeded Governor Edwards as the sole defendant. ROA.103; *see* Fed. R. Civ. P. 25(d). In a declaration filed in August 2024 under penalty of perjury, he explained that he regards appointments based on “race, national origin, or minority status as constitutionally impermissible.” ROA.104. Consistent with his longstanding opposition to race-based government action,¹ the Governor expressly disavowed using those criteria in this context: “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.” ROA.105. Instead, he “intend[s] to and will appoint members who [he] deem[s] best qualified to represent the health care community and who otherwise meet the terms of La. R.S. 37:1263(B).” *Id.* Concerning his predecessor’s appointments, he explained that “to the extent the appointments were based on race,

¹ During his eight years as Attorney General, Landry repeatedly opposed race-based government action. *See, e.g.*, Br. of Louisiana & Other States as Amici Curiae, *Merrill v. Milligan*, Nos. 21-1086 & 21-1087, 2022 WL 1462962 (U.S. May 2, 2022) (opposing racial gerrymandering); Br. of Oklahoma & 18 Other States as Amici Curiae, *Students for Fair Admissions, Inc. v. Univ. of N.C.*, No. 21-707, 2022 WL 2919651 (U.S. May 9, 2022) (urging rejection of race-conscious admissions); Complaint, *Louisiana v. EPA*, No. 2:23-cv-00692 (W.D. La. May 24, 2023), ECF No. 1 (challenging EPA’s disparate-impact rules). As Governor, he has also publicly applauded the elimination of DEI programs from Louisiana’s universities. *See* Jeff Landry, *Gov. Jeff Landry Opens Second Regular Session*, Off. of the Governor (Apr. 14, 2025), perma.cc/5PS9-B6TA.

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.” *Id.*

Relying on his declaration, Governor Landry moved to dismiss on mootness and sovereign-immunity grounds. ROA.148-56. Plaintiff opposed dismissal, acknowledging that it “does not question Governor Landry’s sincerity,” and separately moved for summary judgment. ROA.163, 184. The Governor opposed that motion on the same jurisdictional grounds without defending the challenged provisions’ constitutionality. ROA.280-87.

To establish its members’ standing, Plaintiff submitted a declaration from its executive director, Kristina Rasmussen, executed on January 28, 2025. ROA.224-27. Rasmussen repeated that Plaintiff has physician and consumer members qualified, willing, and able to serve if the challenged provisions are enjoined, then described three anonymous members. ROA.225-26. “Member A” is a nonminority Louisiana psychiatrist with more than forty years of experience whom Rasmussen described as “qualified to serve as a physician on the Medical Board.” ROA.225-26. Members B and C are nonminority Louisiana residents who

each “would like to be considered” for the consumer opening. ROA.226. Rasmussen likewise recited their statutory qualifications. ROA.226.

The district court resolved the case on sovereign-immunity grounds without reaching Plaintiff’s standing or the merits. ROA.311-15. Applying *Mi Familia Vota v. Ogg*, 105 F.4th 313, 330 (5th Cir. 2024), it focused on “the prior or contemporaneous affirmative acts of the named official” and emphasized that “Governor Landry has declared that he will never appoint Board members on the basis of their race.” ROA.314. “Because Governor Landry has demonstrated that he will not enforce the challenged statute,” the court concluded, “he is not a proper defendant under *Ex Parte Young*, and this suit cannot be maintained.” ROA.312. The court added that the compulsion-or-constraint guidepost was “somewhat ill-fit to this context” because the statute “is not a statute that imposes criminality or liability,” ROA.314, and dismissed “without prejudice for want of a proper defendant,” denying the summary-judgment motion as moot. ROA.315. Plaintiff appealed. ROA.316.

SUMMARY OF THE ARGUMENT

I. The district court correctly dismissed this suit. **(A)** Sovereign immunity bars Plaintiff’s claims against Governor Landry. *First, Ex*

parte Young requires enforcement through compulsion or constraint. The challenged provisions govern the Governor’s own appointment decisions, but they do not authorize him to compel or constrain the schools, association, or anyone else Plaintiff identifies. Any indirect influence his appointments might exert on those institutions falls short of the enforcement connection this Court requires.

Second, Governor Landry has demonstrated that he will not enforce the challenged racial criteria. He regards race-based appointments as “constitutionally impermissible” and has sworn that he “will not enforce the subject statute in that regard,” covering appointments “now or in the future.” Plaintiff concedes his sincerity and identifies no contrary conduct. It instead relies on Governor Edwards’s appointment decisions. But *Ex parte Young*’s fiction rests on an ongoing or threatened violation attributable to the named official. Governor Edwards’s actions therefore cannot establish Governor Landry’s willingness to continue a practice he has expressly repudiated.

(B) Article III independently forecloses this suit. *First*, Plaintiff has not established its standing. To sue on its members’ behalf, Plaintiff needed a member who, when this suit began, was able and ready to seek

appointment in the reasonably foreseeable future. Its collective assertions of qualifications and interest do not establish any particular member's concrete plans. Nor does its later declaration fill that gap. It identifies no application, relevant conversation, preparation, or timeframe for seeking appointment, and it does not connect the members' professed interest to the filing of the Complaint. Plaintiff cannot avoid the requirements of *Carney v. Adams*, 592 U.S. 53 (2020), by presenting an individual's generalized interest through an association.

For many of the same reasons Plaintiff cannot invoke *Ex parte Young*, it also cannot establish that any threatened unequal treatment is traceable to the Governor or redressable by an injunction against him. His sworn commitment forecloses the race-based consideration Plaintiff seeks to enjoin. And insofar as Member A's alleged injury depends on the preparation of physician recommendation lists, those decisions belong to the LSU Health Sciences Centers at New Orleans and Shreveport and the Louisiana Hospital Association, none of which is a defendant. An injunction against the Governor would not bind those institutions in preparing their lists.

Second, even assuming Plaintiff had standing at the outset, Governor Landry's rejection of race-based appointments renders any otherwise-live controversy moot. The change in administration followed an election that preceded this lawsuit; it was not a litigation-driven reversal of policy. Governor Edwards left office, and Governor Landry arrived with a longstanding position against race-based government action. Rule 25(d)'s automatic substitution does not convert that succession into strategic voluntary cessation.

Even if the heightened voluntary-cessation standard applies, the Governor's unequivocal declaration satisfies it. He rejects the challenged racial criterion itself, unequivocally disavows its future use, and rests that commitment on his conclusion that race-based appointments violate federal law. Plaintiff concedes his sincerity. Neither the statute's continued presence on the books nor speculation that a future governor might reverse course establishes a reasonable expectation of recurrence.

II. If this Court nevertheless reverses, it should remand for further proceedings. The district court dismissed on jurisdictional grounds and denied Plaintiff's summary-judgment motion as moot. Plaintiff offers no

sufficient reason to depart from the ordinary course of allowing the district court to address the merits in the first instance.

STANDARD OF REVIEW

This Court reviews a dismissal under Rule 12(b)(1) de novo and jurisdictional findings of fact for clear error. *Flores v. Pompeo*, 936 F.3d 273, 276 (5th Cir. 2019). In resolving a jurisdictional challenge, the district court may consider evidence outside the pleadings and is “free to weigh the evidence and resolve factual disputes” bearing on its jurisdiction. *Id.* (citation omitted).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DISMISSED THIS SUIT.

Plaintiff seeks to enjoin Governor Landry from doing what he has unequivocally committed not to do. **(A)** Sovereign immunity bars that effort because (1) the Governor’s appointment authority alone does not establish the requisite enforcement connection and, in all events, (2) he has demonstrated that he will not enforce the challenged provisions. **(B)** Article III independently forecloses the suit, as (1) Plaintiff inadequately showed its members’ standing, and (2) the Governor’s commitment to race-neutral appointments renders any remaining controversy moot.

A. Sovereign Immunity Bars This Suit Against Governor Landry.

Governor Landry is entitled to sovereign immunity. Suits against state officials in their official capacities “are effectively suits against a state.” *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019). *Ex parte Young*’s narrow exception “permits plaintiffs to sue a state officer in his official capacity for an injunction to stop ongoing violations of federal law.” *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 671 (5th Cir. 2022) (citing *Ex parte Young*, 209 U.S. 123, 155–56 (1908)). To invoke that exception, however, a plaintiff must establish that “[t]he officer sued” has “*some* connection with the enforcement of the challenged act.” *Id.* at 672 (citation modified). That requires a “particular duty to enforce the statute in question,” a “demonstrated willingness to exercise that duty,” and enforcement through “compulsion or constraint.” *Id.* (citations omitted).

Plaintiff cannot make that showing. Its argument rests on the Governor’s appointment authority and his predecessor’s actions. But Governor Landry has declared the challenged race-based appointments “constitutionally impermissible” and sworn that he “will not enforce the subject statute in that regard.” ROA.104-05. Accordingly, the district

court correctly held that Plaintiff cannot invoke *Ex parte Young* against him. ROA.313-15.

1. The Governor’s appointment authority alone does not establish the requisite enforcement connection.

To show an enforcement connection sufficient to trigger *Ex parte Young*, Plaintiff emphasizes that the Governor alone appoints members of the Board. Blue.Br.16, 19–20. True, but in this context, “‘enforcement’ means ‘compulsion or constraint.’” *Scott*, 28 F.4th at 672 (citation omitted); see *City of Austin*, 943 F.3d at 1001 (“[T]he mere fact that [a state official] *has* the authority to enforce” a statute “cannot be said to ‘constrain’” the plaintiff.). To be sure, the Court has said “[e]nforcement goes beyond the ‘type of direct enforcement ... where the attorney general threaten[s] civil and criminal prosecution.’” *La Union del Pueblo Entero v. Nelson*, 163 F.4th 239, 258 (5th Cir. 2025) (citation omitted). But “where the official’s role in enforcing a statute [i]s merely to train and advise other officials, such acts d[o] not ‘compel or constrain’ anyone to comply with the statute.” *Mi Familia Vota*, 105 F.4th at 332.

That doctrinal line matters here. As Plaintiff itself emphasizes, the Governor is “the only official charged by statute with making these appointments.” Blue.Br.21. But therein lies the compulsion-or-constraint

problem. As the district court recognized, the Governor “could only compel or constrain himself.” ROA.314. And any soft influence his appointment decisions might exert on LSU, the Louisiana Senate, the Louisiana Hospital Association, or the medical community does not establish that he compels or constrains their conduct under the statute. *See* Blue.Br.19–21; *see also Scott*, 28 F.4th at 672 (“If the official does not compel or constrain anyone to obey the challenged law, enjoining that official could not stop any ongoing constitutional violation.”).

This Court rejected an even stronger connection in *Ostrewich v. Tatum*, 72 F.4th 94, 100–01 (5th Cir. 2023). There, the Texas Secretary of State was “responsible for training presiding judges to enforce elections law” and issued interpretive advisories guiding their decisions. *Id.* at 100. Yet those statutory responsibilities were insufficient because “[o]ffering advice, guidance, or interpretive assistance does not compel or constrain” the officials charged with enforcement. *Id.* at 101 (citation omitted). Here, the challenged provisions give the Governor no comparable authority to direct, advise, train, or guide those institutions. If those express statutory responsibilities did not establish an

enforcement connection in *Ostrewich*, the indirect influence Plaintiff attributes to the Governor's appointments cannot suffice either.

2. In all events, Governor Landry has demonstrated that he will not enforce the challenged provisions.

Even assuming the Governor's appointment authority satisfies *Ex parte Young*'s enforcement connection, Plaintiff still must establish his "demonstrated willingness" to enforce the racial criteria. *Scott*, 28 F.4th at 672. That requirement follows from *Ex parte Young*'s "foundational requirement that a violation of federal law be *ongoing*." *Mi Familia Vota*, 105 F.4th at 330. To satisfy it, Plaintiff must identify "'some scintilla' of affirmative action by the state official" toward enforcement. *Id.* at 329 (citation omitted). That inquiry focuses on "the prior or contemporaneous affirmative acts of *the named official*." *Id.* at 330 (emphasis added).

Here, Governor Landry has affirmatively disavowed the very enforcement Plaintiff must show he is willing to undertake. Governor Landry regards appointments based on "race, national origin, or minority status as constitutionally impermissible." ROA.104. He has sworn that he "will not enforce the subject statute in that regard" and will not make race-based appointments "now or in the future." ROA.105. Plaintiff concedes his sincerity. Blue.Br.26. The district court thus correctly held

“Governor Landry has demonstrated that he will not enforce the challenged statute,” so “he is not a proper defendant under *Ex Parte Young*.” ROA.312. Plaintiff nevertheless insists that disavowing enforcement “is not—and has never been—a recognized defense.” Blue.Br.22. But *Mi Familia Vota* says otherwise. 105 F.4th at 331 n.12.

Unable to identify enforcement by Governor Landry, Plaintiff turns to his predecessor. It points to documents showing that Governor Edwards considered race when seeking Board candidates. Blue.Br.17 (citing ROA.170-83). But Governor Landry expressly stated that he “did not participate in or advise in” those appointments and “will not enforce the subject statute in that regard.” ROA.105.

Imputing Governor Edwards’s conduct to Governor Landry, moreover, would divorce *Ex parte Young*’s fiction from its justification. The exception rests on the premise that an official acting unconstitutionally is “stripped of his official or representative character.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984) (citation omitted). For that purpose, “he is not the State for sovereign-immunity purposes.” *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011). Before stripping an official of that protection, a federal court

therefore must identify an *ongoing* violation attributable to *that* official. That is why the fiction’s demonstrated-willingness requirement turns on “the prior or contemporaneous affirmative acts of *the named official*.” *Mi Familia Vota*, 105 F.4th at 330 (emphasis added). Governor Edwards’s past conduct cannot establish Governor Landry’s willingness to continue a practice he has expressly repudiated.

Finally, Plaintiff objects that if the Governor cannot be sued under *Ex parte Young*, “no state official could ever be sued to enjoin this law,” which it believes “a result *Ex parte Young* does not permit.” Blue.Br.21. Not true. It is not “absurd” that “no valid officer can be sued” because a plaintiff may not “pick and choose the timing and preferred forum.” *Mi Familia Vota*, 105 F.4th at 333. The Supreme Court has “never recognized an unqualified right to pre-enforcement review of constitutional claims in federal court.” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 49 (2021).

Nothing about that result leaves a victim of racial discrimination “odious to a free people” without recourse. *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll. (SFFA)*, 600 U.S. 181, 208 (2023) (citation omitted). An applicant could challenge a federally funded

school's discriminatory nominations under Title VI. *See* 42 U.S.C. §§ 2000d, 2000d-4a(2)(A), 2000d-7. A future governor or LSU administrator who discriminates in making appointments or nominations could face an individual-capacity damages claim under § 1983. *Cf. Do No Harm v. David Geffen Sch. of Med. at UCLA*, 812 F. Supp. 3d 1035, 1043 (C.D. Cal. 2025) (denying qualified immunity). And an applicant facing racial exclusion could pursue a state constitutional challenge in state court. *See La. Associated Gen. Contractors, Inc. v. State*, 669 So. 2d 1185, 1196–97 (La. 1996). But what Plaintiff cannot do is dispense with *Ex parte Young*'s requirements simply because it prefers a federal injunction against this Governor right now.

B. Article III Independently Forecloses This Suit.

Even apart from sovereign immunity, this suit cannot proceed under Article III. That is because **(1)** Plaintiff has not established that any member had standing when it filed suit. **(2)** Even assuming a justiciable controversy at the outset, Governor Landry's unequivocal commitment to race-neutral appointments renders it moot.²

² “Though the district court relied exclusively on sovereign immunity, this [C]ourt may affirm dismissal for any reason supported by the record.” *Walmart Inc. v. U.S. Dep’t of Just.*, 21 F.4th 300, 307 (5th Cir. 2021). Indeed, it has an “independent

1. Plaintiff has not established its standing.

Article III standing independently requires dismissal. As the party asserting jurisdiction, Plaintiff “bears the burden of establishing standing as of the time [it] brought th[e] lawsuit and maintaining it thereafter.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Carney*, 592 U.S. at 59). It brought this suit “on behalf of itself and its members.” ROA.10.

To proceed on its members’ behalf,³ Plaintiff needed to show that “its members would otherwise have standing to sue in their own right.” *SFFA*, 600 U.S. at 199 (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). That requirement demands “specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009); accord *La Union del Pueblo Entero v. Abbott*, No. 25-50246, 2026 WL 2333656, at *2–3 (5th Cir. Aug. 12, 2026). Plaintiff has not made that

obligation” to examine subject matter jurisdiction, which “can never be forfeited or waived.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citation omitted).

³ Plaintiff appears to have abandoned on appeal any theory of organizational standing suggested below. See ROA.200. For good reason: Plaintiff alleges no concrete injury to its own operations, and a “setback to the organization’s abstract social interests” does not suffice. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) (citation omitted); see *La Union del Pueblo Entero v. Abbott*, No. 25-50246, 2026 WL 2333656, at *4 (5th Cir. Aug. 12, 2026) (collecting cases).

showing for any of “the irreducible constitutional minimum[s] of standing.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Injury. Plaintiff has not established that a particular member “suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Bay Area Unitarian Universalist Church v. Ogg*, 185 F.4th 523, 535 (5th Cir. 2026) (en banc) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)). Because Plaintiff seeks prospective relief, it must establish “a continuing (*i.e.*, ongoing) or ‘imminent’ future injury.” *Jackson v. Wright*, 82 F.4th 362, 369 (5th Cir. 2023); see *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.” (citation modified)). In other words, “[w]hen an organization seeks injunctive relief, the member who alleges the injury must show a ‘substantial risk’ that future injury will occur.” *La Union del Pueblo Entero*, 2026 WL 2333656, at *3 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

To satisfy that requirement when challenging the appointment restrictions, Plaintiff needed to establish that it had a member who, “at

the time [it] commenced the lawsuit,” was “‘able and ready’ to apply in the imminent future.” *Carney*, 592 U.S. at 63, 66. But, as in *Carney*, it is insufficient to point to “the act of filing the lawsuit itself” and statements that a prospective applicant “wants to be, and would apply to be,” appointed. *Id.* at 61–62. Instead, “injury in fact requires an intent that is concrete.” *Id.* at 64. That intent may be reflected in an “actual past injury,” “anticipated timeframe,” “prior ... applications,” “prior relevant conversations,” “efforts to determine likely openings,” or “other preparations or investigations.” *Id.* at 63; *see, e.g., Do No Harm v. Gianforte*, No. 6:24-cv-24, 2025 WL 756742, at *5 (D. Mont. Jan. 10, 2025), *report and recommendation adopted*, 2025 WL 399753 (D. Mont. Feb. 5, 2025).

The Complaint (ROA.10-11, 14) and Rasmussen’s declaration (ROA.224-27) supply what little this record reveals about Plaintiff’s members. The Complaint describes unidentified members as “qualified, willing, and able to be appointed to the Board if the racial mandate is enjoined.” ROA.10–11, 14. Rasmussen repeats that general assertion,

then describes three anonymous members. ROA.225–226.⁴ Member A, she says, is a nonminority physician “qualified to serve as a physician on the Medical Board.” ROA.225-26. Members B and C are nonminority consumers who each “would like to be considered” for the consumer opening and satisfy the statutory qualifications. ROA.226. Those limited descriptions expose three glaring *Carney* problems.

First, Plaintiff supplies no particulars showing “an intent that is concrete.” *Carney*, 592 U.S. at 64. It identifies no “prior ... applications,” “prior relevant conversations,” or “other preparations or investigations” by any member. *Id.* at 63; *see Do No Harm v. Gianforte*, 2025 WL 399753, at *2 (D. Mont. Feb. 5, 2025) (“Plaintiff does not allege that any of its members applied or even intended to apply to the Board of Medical Examiners.”). Louisiana provides a Boards and Commissions Application, *see Boards and Commissions Application, supra*, but

⁴ Accepting Rasmussen’s conclusory account of unnamed members’ intentions would further relax a doctrine that already “raises constitutional concerns by relaxing both the injury and redressability requirements for Article III standing.” *All. for Hippocratic Med.*, 602 U.S. at 399 (Thomas, J., concurring); *cf. United States Postal Serv. v. California*, No. 26A305, 2026 WL 2687160, at *2 (U.S. Sept. 14, 2026) (Alito, J., dissenting) (“The organizations also assert associational standing based on injuries to unnamed members who never filed declarations themselves. Such cryptic filings cannot be used to show standing.”); *see, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 346 F. Supp. 3d 174, 190–92 & n.15 (D. Mass. 2018) (discussing evidence developed from specific “Standing Members”).

nothing in this record indicates that any member submitted one. Nor does the record identify any “prior relevant conversations” between Member A and the schools or association responsible for nominating candidates for the affected physician seats. *Carney*, 592 U.S. at 63; see La. R.S. § 37:1263(B)(2)–(3), (7). The members’ qualifications and desire to “be considered” alone leave them in the same position as James Adams in *Carney*.

Second, Plaintiff supplies no member’s “anticipated timeframe” or “efforts to determine likely openings.” *Carney*, 592 U.S. at 63. Sure, Plaintiff itself elsewhere identified a consumer-seat opening in 2026. ROA.202. But even assuming its members knew of that opening, nothing connects it to either consumer member’s concrete plans to seek consideration. Identifying when a seat will open does not establish when—or whether—a member intends to pursue it. As this Court recently reiterated, “‘some day’ intentions—without any description of concrete plans, or indeed [even] any specification of *when* the some day will be—do not support a finding of the ‘actual or imminent’ injury that [is] require[d].” *Texas v. U.S. Dep’t of Interior*, No. 25-50747, 2026 WL 2672757, at *11 (5th Cir. Sept. 11, 2026) (quoting *Lujan*, 504 U.S. at 564);

accord Barber v. Bryant, 860 F.3d 345, 357 (5th Cir. 2017) (“allegations of *possible* future injury” or injury based on a “speculative chain of possibilities” do not suffice (citation omitted)).

Third, Plaintiff leaves the critical Complaint date unaddressed. *Carney* asks whether the prospective applicant was ready “at the time he commenced the lawsuit.” *Carney*, 592 U.S. at 63. Plaintiff filed suit in January 2024; Rasmussen executed her declaration a year later. ROA.9, 227. Neither document establishes when these three individuals joined Plaintiff or connects their individual intentions to January 2024. ROA.10-11, 225-27. Describing their qualifications and interest in January 2025 does not establish that they were “‘able and ready’ to apply” in January 2024. *Carney*, 592 U.S. at 63.

Carney applies equally to James Adams and “Member A.” Associational standing requires members to possess standing “in their own right,” *SFFA*, 600 U.S. at 199 (citation omitted), including “an intent that is concrete,” *Carney*, 592 U.S. at 64. Otherwise, courts would be “providing advisory opinions at the request of one who, without other concrete injury, believes that the government is not following the law.” *Carney*, 592 U.S. at 64; *cf. Trump v. CASA, Inc.*, 606 U.S. 831, 867 (2025)

(Alito, J., concurring) (emphasizing “the need for rigorous and evenhanded enforcement of third-party-standing limitations”). Accordingly, Plaintiff has not established an injury in fact.

Causation. Even assuming Members A, B, and C had concrete plans to seek appointment to the Board, Plaintiff needed to show that each member’s alleged injury “likely was caused or will be caused by the defendant” and “likely would be redressed by the requested judicial relief.” *All. for Hippocratic Med.*, 602 U.S. at 380. And those requirements are often “flip sides of the same coin.” *Id.* (citation omitted).

For all three anonymous members, Plaintiff cannot identify any current or impending race-based appointment decision by the Governor. The record identifies incumbents occupying every Board seat. ROA.194–195. And when an opening arises, the Governor has unequivocally committed to consider candidates without regard to race. ROA.105; *see Wang v. Paxton*, 161 F.4th 357, 364 (5th Cir. 2025) (rejecting importing voluntary cessation principles into standing analysis where “plaintiff must establish standing”). Thus, neither the present absence of an opening nor the prospect of a future appointment establishes threatened unequal treatment attributable to the Governor. *Cf. Murthy*, 603 U.S. at

70 (finding no likely future injury where “the Government has represented that it will not resume operations for the 2024 election”); *see Do No Harm v. Lee*, No. 3:23-cv-01175, 2024 WL 3730623, at *6 (M.D. Tenn. Aug. 8, 2024) (“Either way, the certainty of injury to Members A and B is speculative. ... Here, the Plaintiff has not met that burden.”). Whether framed as a standing defect or, as explained below, mootness, the absence of an injury traceable to the Governor’s conduct requires dismissal.

Plaintiff’s “Member A” theory faces an additional causation hurdle. The Governor does not prepare the physician recommendation lists—the LSU Health Sciences Centers at New Orleans and Shreveport and the Louisiana Hospital Association do. *See* La. R.S. § 37:1263(B)(2)–(3), (7). Plaintiff’s assertion that the recommendation lists will remain “curated by race,” ROA.203, does not impute their preparation to the Governor. Plaintiff identifies none of his actions that “compel or constrain” those nomination decisions. *La Union del Pueblo Entero*, 2026 WL 2333656, at *4–5 (citation omitted). Indeed, he has publicly applauded the elimination of DEI programs from Louisiana’s universities. *See* Jeff Landry, *Gov. Jeff Landry Opens Second Regular Session*, Off. of the

Governor (Apr. 14, 2025), perma.cc/5PS9-B6TA (“And our higher education community is also following your instructions, purging the wasteful and divisive DEI programs from our universities, once and for all!”). Plaintiff’s speculation that those institutions will discriminate supplies no basis for attributing a threatened injury to the Governor.

That defect is clearest through a redressability lens. An injunction prohibiting the Governor (the only defendant) from considering race would not change how LSU Health Sciences Centers at New Orleans and Shreveport and the Louisiana Hospital Association prepare their lists. Those institutions are “not parties to the suit, and there is no reason they should be obliged to honor an incidental legal determination the suit produced.” *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) (citation omitted). A favorable constitutional ruling might persuade them, but “[i]t is a federal court’s judgment, not its opinion, that remedies an injury.” *Id.* at 294. Plaintiff cannot remedy its asserted injury from discriminatory list preparation through a judgment against the Governor alone.

2. Alternatively, Governor Landry’s rejection of race-based appointments moots this suit.

Even assuming Plaintiff had standing when it sued Governor Edwards, the controversy was moot the day Governor Landry took office. *See Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 425 (5th Cir. 2013) (“Mootness applies when intervening circumstances render the court no longer capable of providing meaningful relief to the plaintiff.”). Consistent with his longstanding public opposition to race-based government action, Governor Landry has unequivocally committed to consider Board candidates without regard to race. ROA.104-05. That commitment—which Plaintiff concedes is sincere, Blue.Br.26—renders this case moot.

To evade mootness, Plaintiff repeatedly invokes (at 23–27) the voluntary-cessation exception. Under that doctrine, “a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). But here, the alleged threat ended through an independently occurring change in administration. Governor Edwards did not stop his appointment practices to obtain dismissal. He left office. And Governor Landry was elected before this lawsuit and took office four days after Plaintiff filed it.

ROA.9, 288. He neither participated in his predecessor's appointment decisions nor defends the challenged racial requirements. ROA.104-05.

Governor Landry became a party solely through Rule 25(d)'s automatic substitution, not because he adopted or enforced the challenged appointment practices. And the Rule's advisory committee note expressly permits a successor to "seek to have the action dismissed as moot" when he "does not intend to pursue the policy of his predecessor which gave rise to the lawsuit." Fed. R. Civ. P. 25 advisory committee's note to 1961 amendment; *cf. Biden v. Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring) (attributing the Court's mootness disposition to "the change in Presidential administration").

Nor does the successor's adoption of a different policy automatically trigger voluntary-cessation doctrine. That doctrine "does not apply automatically whenever the prospect of mootness is raised by a party's voluntary conduct." *Pub. Citizen, Inc. v. FERC*, 92 F.4th 1124, 1128 (D.C. Cir. 2024). Applying that distinction after *FBI v. Fikre*, 601 U.S. 234 (2024), the D.C. Circuit explained that the heightened burden arises "only if there is some evidence that the party sought to manipulate the court's jurisdiction." *Samma v. Dep't of Def.*, 136 F.4th 1108, 1114 (D.C.

Cir. 2025). And a change in administration naturally brings changes in policy “driven by political considerations wholly unrelated to [the] case.” *Mass. Coal. for Immigr. Reform v. DHS*, 800 F. Supp. 3d 134, 142 (D.D.C. 2025).

That is the case here. Plaintiff identifies race-conscious decisions by Governor Edwards’s administration, Blue.Br.24–25 (citing ROA.170-183), but no practice Governor Landry adopted and then abandoned to evade review. On this record, therefore, the change in administration and the successor’s contrary position do not present the strategic cessation addressed in *Fikre*.

Even if *Fikre*’s standard applies, the Governor has carried the “formidable burden” of establishing that the challenged conduct cannot reasonably be expected to recur. *Fikre*, 601 U.S. at 241 (citation omitted). His declaration rejects race-based appointments as “constitutionally impermissible,” ROA.104, and expressly states that he “will not enforce the subject statute in that regard,” ROA.105. That commitment extends to appointments “now or in the future.” ROA.105. He instead “intend[s] to and will appoint members who [he] deem[s] best qualified to represent the health care community.” *Id.* Unlike the declaration in *Fikre*, which

left open whether the government would repeat the alleged discrimination under future circumstances, this declaration rejects the challenged criterion for future appointments altogether. *See* 601 U.S. at 242–44.

The statute’s zombie existence does not establish otherwise. While Plaintiff insists that only legislative repeal can moot this case, Blue.Br.25, this Court does not require “some physical or logical impossibility that the challenged policy will be reenacted.” *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009). And after *Fikre*, it reiterated that the government’s “mere power to reenact” a policy does not establish a reasonable expectation of recurrence. *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 142 F.4th 819, 827 (5th Cir. 2025) (citation omitted).⁵

The possibility that a future governor could reverse course does not, without a reasonable expectation of recurrence, save this case from mootness.

⁵ Sister circuits, moreover, have expressly found challenges to un repealed statutes moot based on express nonenforcement commitments, including where a successor could change course. *See, e.g., Brown v. Buhman*, 822 F.3d 1151, 1170–78 (10th Cir. 2016); *Wis. Right to Life, Inc. v. Schober*, 366 F.3d 485, 491–92 (7th Cir. 2004).

II. ANY REVERSAL SHOULD RESULT IN REMAND FOR FURTHER PROCEEDINGS.

Even if this Court concludes that jurisdiction exists, the proper disposition is a remand for further proceedings. Recall that the district court granted the Governor’s motion to dismiss on jurisdictional grounds and denied Plaintiff’s summary-judgment motion as moot. ROA.311-15. Plaintiff nevertheless asks this Court to direct entry of summary judgment in its favor. Blue.Br.28. But the ordinary course is to permit the district court to do so in the first instance. *See, e.g., PHH Mortg. Corp. v. Old Republic Nat’l Title Ins. Co.*, 80 F.4th 555, 563–64 (5th Cir. 2023) (reversing a district court’s 12(b)(7) dismissal and “declin[ing] to reach the merits of the parties’ cross-motions for summary judgment”).

CONCLUSION

The Court should affirm.

Dated: September 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 24, 2026, I filed the foregoing brief with the Court's CM/ECF system, which will automatically send an electronic notice of filing to all counsel of record.

/s/ Zachary Faircloth

CERTIFICATE OF COMPLIANCE

Pursuant to Fifth Circuit Rule 32.3, the undersigned certifies that this brief complies with:

(1) the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7) because it contains 6,489 words, excluding the parts of the document exempted by Rule 32(f); and

(2) the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook font, except for footnotes in 12-point font) using Microsoft Word (the same program used to calculate the word count).

/s/ Zachary Faircloth

Dated: September 24, 2026

No. 25-30568

In the United States Court of Appeals for the Fifth Circuit

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

v.

JEFF LANDRY, in his official capacity as the Governor to the State of
Louisiana as successor in office to Governor John Bel Edwards,
Defendant–Appellee.

On Appeal from the United States District Court
for the Western District of Louisiana
No. 5:24-CV-0016, Hon. Jerry Edwards, Jr.

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Tab 1

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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

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State of Virginia*

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V.

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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>

		(<u>p.19</u>) 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 here . Executed consent forms must be emailed to lawdml_consents@lawd.uscourts.gov. DO NOT return the form to the judges. (crt,Keller, J) (Entered: 04/11/2024)
04/11/2024	<u>17 (p.57)</u>	**VACATED** 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 Rogs, # <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

**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,¹ 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

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

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**pro hac vice*

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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Caleb R. Trotter

Tab 3

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

**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 26th 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 5

**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 6

CERTIFICATE OF SERVICE

I certify that on September 24, 2026, I filed the foregoing document with the Court's CM/ECF system, which will automatically send an electronic notice of filing to all counsel of record.

/s/ Zachary Faircloth
ZACHARY FAIRCLOTH