

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

JUNE MEDICAL SERVICES LLC d/b/a HOPE
MEDICAL GROUP FOR WOMEN, on behalf of
its patients, physicians, and staff; BOSSIER
CITY MEDICAL SUITE, on behalf of its
patients, physicians, and staff; JOHN DOE 1,
M.D.; JOHN DOE 2, M.D., and JOHN DOE 3,
M.D.,

Plaintiffs,

v.

REBEKAH GEE, in her official capacity as
Secretary of the Louisiana Department of Health;
JEFF LANDRY, in his official capacity as
Attorney General of Louisiana; JAMES E.
STEWART, SR., in his official capacity as
District Attorney for Caddo Parish; J.
SCHUYLER MARVIN, in his official capacity as
District Attorney for Bossier and Webster
Parishes; and JAY DARDENNE, in his official
capacity as Commissioner of the Division of
Administration of Louisiana,

Defendants.

Case No. 3:16-cv-00444-BAJ-RLB

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiffs June Medical Services LLC (d/b/a Hope Medical Group for Women) (“Hope”), and Bossier City Medical Suite (“Bossier”), on behalf of their patients, physicians, and staff (collectively, “Clinic Plaintiffs”), JOHN DOE 1, M.D., on behalf of himself and his patients, JOHN DOE 2, M.D., on behalf of himself and his patients, and JOHN DOE 3, M.D., on behalf of himself and his patients (together with the Clinic Plaintiffs, “Plaintiffs”), by and through their undersigned attorneys, and for their Complaint against Defendants Rebekah Gee, in her official capacity as Secretary of the Louisiana Department of Health (“LDH”); Jeff

Landry, in his official capacity as Attorney General of Louisiana; James E. Stewart, Sr., in his official capacity as District Attorney for Caddo Parish; J. Schuyler Marvin, in his official capacity as District Attorney for Bossier and Webster Parishes; and Jay Dardenne, in his official capacity as Commissioner of the Division of Administration of Louisiana, state as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief brought under the United States Constitution and 42 U.S.C. § 1983, to challenge the constitutionality of seven bills restricting abortion passed by the Louisiana Legislature during its 2016 Regular legislative session: Louisiana House Bill 1081, Regular Session (2016) (Act 264), to be codified at La. Rev. Stat. § 40:1061.1.1 (“H.B. 1081”) (attached hereto as Exhibit A); Louisiana House Bill 1019, Regular Session (2016) (Act 563), to be codified at La. Rev. Stat. § 40:1061.1.1 (“H.B. 1019”) (attached hereto as Exhibit B); Louisiana House Bill 815, Regular Session (2016) (Act 593), to be codified at La. Rev. Stat. § 40:1061.25 (“H.B. 815”) (attached hereto as Exhibit C); Louisiana Senate Bill 33, Regular Session (2016) (Act 196), to be codified at La. Rev. Stat. § 14:87.3 (“S.B. 33”) (attached hereto as Exhibit D); Louisiana House Bill 386, Regular Session (2016) (Act 97), to be codified at La. Rev. Stat. §§ 40:1061.10(D)(2), 40:1061.16(B), 40:1061.17(B)(3), (4)(b), (5)-(6), and (8), and 40:1061.18(D) (“H.B. 386”) (attached hereto as Exhibit E); Louisiana House Bill 488, Regular Session (2016) (Act 98), to be codified at La. Rev. Stat. § 40:1061.10(A)(1) (“H.B. 488”) (attached hereto as Exhibit F); and Louisiana House Bill 606, Regular Session (2016) (Act 304), to be codified at La. Rev. Stat. §§ 40:1061.6(A) and 36:21 (“H.B. 606”) (attached hereto as Exhibit G) (collectively, the “2016 Acts”). All of the 2016 Acts, except H.B. 1019 and H.B. 606, which had immediate effective dates, were scheduled to take effect on August 1, 2016.

2. This action also challenges provisions of two emergency regulations issued by LDH, which were scheduled to take effect on December 3, 2016. The first regulation, amending LAC 48:I.4431 (regulating licensed abortion facilities), was promulgated in response to H.B. 1019, H.B. 386, and H.B. 815, and adds regulations adopting the restrictions contained in those Acts and additional requirements as to the disposition of embryonic and fetal tissue (attached hereto as Exhibit H). A second regulation, creating LAC 51:XXVI.102 (regulating the disposition of human bodies), was also promulgated in response to H.B. 815 (attached hereto as Exhibit I). (The 2016 Acts and emergency regulations are hereafter collectively referred to as “the 2016 Restrictions.”)

3. H.B. 1019 requires LDH to produce an “informational document” regarding “fetal genetic abnormality” and “children born with disabilities,” and imposes criminal penalties on any physician who performs an abortion without giving the patient this document in advance. The Legislature included an immediate effective date in this bill, denying LDH any time to produce the document before the law was to take effect, thus throwing into doubt the ability to perform abortion in Louisiana, until such time, if any, as LDH produces the document. Additionally, H.B. 1019 prohibits women from obtaining a pre-viability abortion after twenty weeks post-fertilization, for the sole reason that the fetus has been diagnosed with an actual or potential “genetic abnormality,” as defined by the statute, with limited exceptions.

4. The emergency regulation amending LAC 48:I.4431, promulgated in response to H.B. 1019, requires that licensed abortion facilities provide women seeking abortions with the informational document.

5. H.B. 1081 prohibits the performance of dilation and evacuation (D&E) procedures without demise, thus denying Louisiana women seeking second trimester abortions a safe and

commonly used method, and requiring them to undergo an additional risky and invasive procedure, thus effectively depriving women of access to abortion in Louisiana after about 15 weeks from their last menstrual period (“lmp”).

6. H.B. 815 requires interment or cremation for embryonic or fetal tissue following an abortion, with limited exceptions. Among other things, H.B. 815, on its face, bans medication abortion, a commonly used method of abortion in the first trimester, and the only one allowing a woman to pass a pregnancy at home, because an embryo miscarried at home through medication abortion cannot in practice be interred or cremated.

7. The emergency regulation amending LAC 48:I.4431, promulgated in response to H.B. 815, requires that licensed abortion facilities ensure that physicians performing abortions at those facilities dispose of embryonic or fetal tissue by interment or cremation, without reference to the other means of disposition contained in the Act. The regulation also requires that prior to the abortion, the physician inform each woman seeking an abortion, orally and in writing, of her option to either make arrangements herself for the disposition of the fetal remains by interment or cremation, or to have the physician or clinic make those arrangements. The regulation further requires that the woman sign a consent form indicating which option she has chosen.

8. The emergency regulation creating LAC 51:XXVI.102, also promulgated in response to H.B. 815, requires that every physician performing an abortion ensure that the embryonic or fetal tissue is disposed of by interment or cremation, without reference to the other means of disposition contained in the Act.

9. S.B. 33 imposes a term of decades of imprisonment at hard labor for receiving reimbursement for the costs of collecting and storing tissue from abortions, but not miscarriages, for medical research.

10. H.B. 386 prohibits women from granting their informed consent to abortion for three days after being given all the information necessary to do so, thus delaying their abortions.

11. The emergency regulation amending LAC 48:I.4431, promulgated in response to H.B. 386, requires that licensed abortion facilities impose the three-day delay required by that Act. (Hereafter the “Delay Regulation.”)

12. H.B. 488 limits the pool of physicians eligible to perform abortions solely to those board-certified in family medicine or obstetrics and gynecology, or to residency trainees under their supervision.

13. H.B. 606 prohibits any government entity from contracting with or entering into any funding agreement with any entity that performs abortions or with any third-party entities that contract with any entity that performs abortions, with very limited exceptions.

14. These new restrictions individually, and cumulatively with one another, threaten irreparable injury to the Plaintiffs and their patients, including, but not limited to, by depriving Plaintiffs’ patients’ of their constitutional right to abortion.

15. Plaintiffs seek declaratory and injunctive relief from these constitutional deprivations.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over Plaintiffs’ claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3)-(4).

17. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

18. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district, and the majority of Defendants, who are sued in their official capacities, carry out their official duties at offices located in this district.

PARTIES

19. Plaintiffs are two of only four clinics that provide abortions in the entire state of Louisiana, and the physicians that work at those two clinics.

20. Plaintiff Hope is a women's reproductive health clinic located in Shreveport, Louisiana, and has been providing care since 1980. Hope is a member of the National Abortion Federation, and is licensed and inspected annually by LDH. In addition to abortion services, Hope provides contraception, pregnancy testing and counseling, adoption referrals, and community and health professional education programs. Hope sues on its own behalf and on behalf of its physicians, staff, and patients.

21. Plaintiff Bossier is a women's reproductive health clinic that has been operating in Bossier City since 1980, and provides both first and second trimester abortion services. In addition to abortion services, Bossier City offers pregnancy tests, ultrasounds, and pap smears to returning patients. Bossier City sues on its own behalf and on behalf of its physicians, staff, and patients.

22. Plaintiff Dr. John Doe 1, M.D., is a board-certified physician in Family Medicine and Addiction Medicine with over eight years of experience. He is one of two clinic physicians at Hope providing women's health services to the clinic's patients, including providing abortion services. Plaintiff Doe 1 sues on his own behalf and on behalf of his patients.

23. Plaintiff Dr. John Doe 2, M.D., is a board-certified obstetrician-gynecologist ("ob-gyn") with over 34 years of experience in women's health. He is the only clinic physician at

Bossier who provides abortion services. Dr. Doe 2 provides abortions through 21 weeks, 6 days Imp. He provides D&E procedures beginning at about 16 weeks Imp, and sometimes as early as about 15 weeks. Plaintiff Doe 2 sues on his own behalf and on behalf of his patients.

24. Plaintiff Dr. John Doe 3, M.D., is a board-certified ob-gyn with over thirty-five years of experience in women's health. He is one of two clinic physicians at Hope providing abortion services. Plaintiff Dr. John Doe 3 sues on his own behalf and on behalf of his patients.

DEFENDANTS

25. Rebekah Gee is the Secretary of the Louisiana Department of Health. LDH is directed by H.B 1019 to develop the informational document required by the Act and to make that document available to abortion providers. LDH is also tasked with the authority to enforce H.B. 488. LDH has adopted emergency regulations related to H.B. 1019, H.B. 815, and H.B. 386. Furthermore, LDH has the authority to revoke or deny clinics' licenses for violation of any other law. La. Rev. Stat. § 40:2175.6. LDH is authorized to enter into contracts and therefore would be required to abide by the limitations in H.B. 606. Secretary Gee is being sued in her official capacity as to each of the 2016 Restrictions and as to their cumulative effect.

26. Jeff Landry is the Attorney General of the state of Louisiana. As stated in his letter sent on June 8, 2016, to every Louisiana abortion clinic, including Plaintiff Clinics, as Attorney General, Defendant Landry has asserted the authority to enforce laws restricting abortion. He is sued in his official capacity based on his asserted authority as to each of the 2016 Restrictions and as to their cumulative effect.

27. Jay Dardenne is the Commissioner of the Division of Administration of the State of Louisiana. The Division of Administration oversees, manages, reviews, and approves a variety of contracts involving public funds in the state of Louisiana and therefore would have to abide by

the requirements of H.B. 606. Commissioner Dardenne is sued in his official capacity as to H.B. 606.

28. James E. Stewart, Sr., and J. Schuyler Marvin are District Attorneys whose jurisdictions encompass, respectively, Shreveport and Bossier City. All the 2016 Acts, except for H.B. 815 and H.B. 606, expressly or by reference to La. Rev. Stat. § 40:1061.29, provide for criminal penalties including fines and imprisonment, and are thus enforceable by Louisiana district attorneys. Mr. Stewart and Mr. Marvin are being sued in their official capacities as to H.B. 1081, H.B. 488, H.B. 1019, S.B. 33 and H.B. 386, and as to their cumulative effect.

FACTUAL ALLEGATIONS

Abortion methods

29. In the first trimester of pregnancy, abortions are performed using medical or surgical means. Medication abortion involves the ingestion of one medication at the clinic, followed by the ingestion of a second medication at home. The pregnancy is passed at home. The FDA has approved drug labeling for this method of abortion through 70 days Imp. Surgical abortion is performed using a suction device to empty the uterus, and is sometimes called suction curettage. In general, prior to any surgical abortion at any stage of pregnancy, physicians dilate the woman's cervix to allow passage of instruments.

30. The availability of both methods of abortion to women in early pregnancy is an advance in medical care. It allows women two options to suit their particular circumstances. For some women, one of the methods may be medically indicated. In particular, women with certain anatomical or medical conditions complicating surgical abortion, women with a low tolerance for the more invasive nature of surgical abortion, and women living with domestic violence who

can disguise a medication abortion as a miscarriage, if necessary, benefit from the availability of medication abortion.

31. Starting at approximately 15 weeks lmp, or occasionally even earlier, physicians performing abortions may use forceps or other instruments to remove the products of conception (including the fetus, placenta, and umbilical cord) from the uterus, often in combination with suction. Usually, disarticulation of the fetus occurs as the physician brings fetal parts through the cervix. This procedure is known as a dilation and evacuation or D&E procedure. Because of its impressive safety record, D&Es are the most commonly used second-trimester method of abortion, accounting for the vast majority of second trimester abortions nationwide.

32. Legal abortions in the United States are provided by health care providers with a variety of credentials, including specialist physicians, primary care physicians, certified nurse midwives, nurse practitioners, and physician assistants. Suction and medication abortion—which together encompass the vast majority of abortions performed in the United States, and in Louisiana—may safely be provided by a properly trained healthcare provider with any of these credentials. There is no medical basis for limiting the performance of first trimester abortions to board-certified obstetricians/gynecologists and family physicians.

33. Obtaining and maintaining board certification in family medicine requires neither any training in abortion nor any competence in performing abortion. Family medicine residency programs are not required to offer their participants any abortion training.

34. The Louisiana State Board of Medical Examiners has issued an Advisory Opinion stating that, in addition to ob-gyns, a physician who has done any accredited residency and has “received training in the performance of surgical abortions or other gynecologic surgery,” is “deemed to have sufficient training” to perform first-trimester surgical abortion. The opinion

clarifies that “a physician may be considered to have sufficient training to perform first-trimester surgical abortions provided he or she has completed a[] . . . residency in one of the internal medicine specialties, general surgery or one of the surgical specialties, or family medicine, and has obtained appropriate educational and clinical training in performing abortions, where he or she has demonstrated the knowledge, skills, and ability required to perform the procedures.”

35. The opinion also states, “a physician who performs medical abortions need not possess competence in performing the procedures of surgical abortion”

36. The opinion does not mention board certification at all.

37. The opinion concludes, “The Board recognizes that there may be instances where physicians would be deemed competent to perform first trimester medical or surgical abortion, even though they do not have the education, training, experience, and credentials described above.”

Delaying abortion care

38. Abortion is a very safe procedure. Approximately one in three women in the United States will have an abortion over the course of her lifetime.

39. There is no health benefit to a woman in preventing her from granting informed consent to an abortion, after she has visited a clinic, met with a doctor, and been given all the information necessary to grant informed consent, until after a three-day period has passed.

40. Legal, pre-viability abortion is safe at any point in pregnancy, but delayed abortion care is associated with health risks. The risks of complications, and the risk of abortion failure, increase with increasing gestational age. Additionally, every day a woman remains pregnant, she incurs the risks of complications of pregnancy, and endures pregnancy symptoms. The complexity and cost of abortion also increase with increased gestational age.

41. Requiring women to wait for abortions that they have already decided to have imposes mental hardship and suffering, sorrow, and nervousness for some women.

42. There is also no benefit to a woman's decision-making in preventing her from granting her informed consent to an abortion, after she has visited a clinic, met with a doctor, and been given all the information necessary to grant informed consent, until after a three-day period has passed. In particular, such a wait does not help women become more certain about their decision.

43. It is also a violation of medical ethics for a physician to withhold time-sensitive medical care from a patient for no medical reason.

THE INDIVIDUAL RESTRICTIONS AND THEIR IMPACT

H.B. 1081

44. H.B. 1081 prohibits the performance on a living fetus of an abortion procedure described in the act as "dismemberment abortion." Although "dismemberment abortion" is not a medical term, the bill's definition makes clear that it prohibits a D&E.

45. H.B. 1018 defines "dismemberment abortion" as a procedure done:

with the purpose of causing the death of an unborn child, to purposely dismember a living unborn child and extract him or her one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or rip it off or apart.

46. Procedures in which the physician uses only suction, without instruments such as those described in H.B. 1081, are not included in the ban.

47. Any person who performs or attempts to perform an abortion procedure prohibited by H.B. 1081 is subject to imprisonment of up to two years and fines of up to one thousand dollars and "professional disciplinary action."

48. In addition, violation of H.B. 1081 is the “basis for a cause of action for civil damages and injuries and wrongful death . . . whether or not the unborn child was viable at the time the abortion was performed.”

49. H.B 1081 includes an exception, allowing for otherwise-prohibited procedures “necessary to prevent serious health risk[s],” which are defined as “a condition that so complicates [a woman’s] medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function”

50. A physician charged with violating H.B. 1081 “may seek a hearing before the Louisiana State Board of Medical Examiners on whether the physician’s conduct was necessary to save the life of the mother,” with the Board’s findings admissible at trial. By its own terms, this hearing procedure is thus only available to determine whether the D&E was necessary to save the patient’s life, and not to prevent “serious health risk[s].”

51. Prior to 18 weeks Imp, it is not accepted medical practice to induce fetal demise (cause the death of the fetus) by any means prior to performing a D&E procedure, and there are virtually no studies addressing whether it would be safe to do so.

52. Some physicians, beginning around 18 to 20 weeks Imp, do induce fetal demise, based largely on their personal experience that it sometimes helps to shorten the abortion procedure. Dr. Doe 2 typically begins inducing demise at 19 weeks, 4 days Imp. Published research to date has not shown any improvement in safety of the abortion procedure itself from the addition of demise to the standard D&E procedure.

53. Physicians who induce demise, including Dr. Doe 2, typically use an injection of digoxin, a medication that is also used to treat certain heart conditions. The physician

administers the digoxin to the fetus using a needle that is inserted through the woman's abdomen (a transabdominal injection) or through her vagina (transvaginal injection). Digoxin is usually administered 1-2 days before the D&E procedure, in conjunction with beginning dilation.

54. The injection procedure itself carries risks. Digoxin is not available for every patient because of medical contraindications and allergies. Currently, Dr. Doe 2 will still provide a patient with a D&E even if the digoxin injection is contraindicated, but under H.B. 1081 this would no longer be possible.

55. There are no feasible alternatives to D&E. Induction of labor is not the standard of care for abortions and accounts for only about 2% of second trimester procedures. Induction procedures must be performed in a hospital and can require a hospital stay of two to three days. In addition to the expense associated with an inpatient versus an outpatient procedure, many hospitals restrict the circumstances under which abortions may be performed, and therefore would not make services available to most women. These barriers are in addition to the fact that induction subjects women to the pain, anxiety, and health risks of labor, compared to a brief outpatient procedure.

56. Additionally, although Hope does not offer abortions after 16 weeks, 6 days, and generally uses only suction, Hope's only physician providing abortion care during the first three weeks of the second trimester (known as Dr. John Doe 3, M.D., in this action) may, for any given patient beginning at about 15 weeks, need to utilize instruments in addition to suction in order to safely remove the fetus, if suction alone does not complete the abortion. This risks violating H.B. 1081. Dr. Doe 3 cannot predict prior to beginning a procedure if such actions will be necessary. He thus fears criminal prosecution and civil liability for violating H.B. 1081 for all procedures he performs beginning at approximately 15 weeks.

57. In order to avoid the penalties imposed by H.B. 1081 and continue providing abortions at about 15 weeks or later, Plaintiffs must induce demise for each patient, and thereby subject her to a procedure that is more complex, riskier and—prior to 18 weeks—unstudied and not the standard of care, and which includes an invasive injection that involves pain, bodily intrusion, and additional health risks, with no established medical benefits.

58. It is unethical for a physician to perform untested and risky procedures on patients that would have no medical benefit.

59. The Louisiana Legislature passed H.B. 1081 even though the United States Supreme Court has repeatedly held that states are prohibited from banning the most common second trimester abortion procedure—including, in *Stenberg v. Carhart*, 530 U.S. 914 (2000), specifically holding that states may not ban D&E.

60. No other Louisiana law forces any person to undergo a medically unnecessary procedure in order to obtain the health care he or she needs. Only women seeking abortions are singled out in this way. Requiring women to obtain a medically unnecessary procedure to meet the requirements of H.B. 1081 furthers no legitimate state interest.

61. Similarly, no other Louisiana law requires a physician to subject a patient to an unnecessary procedure that he or she does not believe is in her best interests before providing legal health care. Requiring physicians to make the choice between providing D&E abortions according to their best medical judgment or deviating from that judgment in order to meet the requirements of H.B. 1081 furthers no legitimate state interest.

H.B. 1019 and the Related Provisions of the Emergency Regulation

62. H.B. 1019 prohibits the performance of an abortion at 22 weeks Imp or later “with knowledge that the pregnant woman is seeking the abortion solely because the unborn child has

been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.” It further provides:

“Genetic abnormality” means any defect, disease, or disorder that is inherited genetically. The term includes, without limitation, any physical disfigurement, scoliosis, dwarfism, Down Syndrome, albinism, amelia, and any other type of physical, mental, or intellectual disability, abnormality, or disease.

The prohibition does not apply to pregnancies diagnosed as “medically futile,” defined to mean that “in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.”

63. H.B. 1019 thus criminalizes pre-viability abortion based solely on the reason the woman is seeking the abortion.

64. H.B. 1019 also requires that a physician give *all* his or her abortion patients who are prior to 22 weeks lmp, “an informational document including resources, programs, and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs, and services for infants and children born with disabilities,” with the sole exception of abortions intended to save the patient’s life. LDH “shall develop [the] informational document.”

65. Any person violating the provisions of H.B. 1019 is subject to imprisonment and fines, as well as “professional disciplinary action” and civil liability.

66. H.B. 1019 took effect on June 17, 2016. However, LDH has not to date written the “informational document” for which physicians are to be subject to imprisonment, fines, civil liability, and professional discipline for not giving to their abortion patients.

67. The emergency regulation amending LAC 48:I-4431 incorporates the requirement that women seeking abortions receive the informational document. Violation of any of the

provisions of § 4431 can result in fines, as well as suspension and revocation of the abortion facility's license.

68. The emergency regulation amending LAC 48:I.4431 includes the following statement: "NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials."

69. Prior to issuance of the emergency regulation, and in the absence of the Defendants' stipulation not to enforce the 2016 Acts pending litigation of a preliminary injunction, H.B. 1019 arguably banned all abortions in Louisiana until the informational document was available. When the emergency regulation expires, if LDH has not produced the required materials, Plaintiffs' ability to legally provide abortions in Louisiana would once again be in doubt.

70. Moreover, LAC 48:I.4431 regulates only licensed abortion facilities and therefore the emergency regulation does not bind other entities with enforcement authority under H.B. 1019, such as the district attorneys.

71. The "informational document" about resources available for pregnant women "who have a diagnosis of fetal genetic abnormality," must be given to all abortion patients, regardless of the reason why the woman is seeking the abortion, even if the pregnancy is "medically futile." For the great majority of women seeking abortions, who have not had a diagnosis of fetal genetic abnormality, or whose pregnancy is medically futile, this information is irrelevant to their decision.

H.B. 815, S.B. 33, and the Related Provisions of the Emergency Regulations

72. H.B. 815 provides that a physician performing an abortion "shall insure" that the embryonic or fetal tissue is "disposed of by internment or cremation, in accordance with the

provisions of R.S. 8:651 et seq.” La. Rev. Stat. § 8:651 *et seq.* govern the disposition of “every dead body of a human being lying within this state.”

73. “Abortion” is not defined within H.B. 815, but is defined elsewhere in Chapter 40 of the Louisiana Revised Statutes to mean: “the act of using or prescribing any instrument, medicine, drug, or other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child,” not including miscarriage management or ectopic pregnancy treatment. La. Rev. Stat. § 40:1061.9(1). H.B. 815 also provides that “[n]othing in this Section shall be construed to alter generally accepted medical standards”

74. H.B. 815 does not prohibit “final disposition in accordance with state law,” or conduct that is undertaken for “the purpose of providing knowledge” “solely to the mother, such as for diagnostic or pathological purposes,” or “to law enforcement officers, such as the case of an autopsy following feticide.”

75. The penalty for violating H.B. 815 includes “professional disciplinary action,” as set forth in La. Rev. Stat. § 40:1061.29.

76. On its face, H.B. 815’s requirement that embryonic and fetal tissue following abortion be either buried or cremated is an effective ban on first trimester medication abortion. During a medication abortion, the products of conception are passed at home and collected and disposed of by the woman in the same or similar manner as that used during menstruation. Thus, the physician cannot insure that the embryonic or fetal tissue is disposed of by interment or cremation, and therefore cannot provide a medication abortion and comply with H.B. 815.

77. The emergency regulation amending LAC 48:I.4431, promulgated in response to H.B. 815, requires that at licensed abortion facilities, physicians performing abortions must ensure that the embryonic or fetal tissue is disposed of by interment or cremation.

78. Although not required by H.B. 815, the emergency regulation amending LAC 48:I.4431 also requires that the physician, prior to an abortion, “shall orally and in writing inform the pregnant woman” that she has the option of either making arrangements herself for the disposition of the embryonic or fetal tissue by interment or cremation or to have the physician or clinic make those arrangements. The regulation further requires that the woman sign a consent form indicating which option she has chosen. (Hereafter the “Consent for Disposition Regulation.”)

79. The Consent for Disposition Regulation on its face applies to all abortions, without acknowledging that under H.B. 815, the interment or cremation requirement does not apply if embryonic or fetal tissue is sent for examination or provided to law enforcement. Nor does the provision explain how the physician is to proceed in those circumstances.

80. While H.B. 815’s requirement that embryonic or fetal tissue be interred or cremated, if no exception is applicable, is unnecessary and impermissibly burdens abortion, the additional requirements in the emergency regulation that only a physician may discuss these options with the woman and that the woman must sign a written consent form, impose additional unnecessary burdens on women seeking abortions.

81. The emergency regulation creating 51:XXVI.102 requires that every physician performing an abortion ensure that the embryonic or fetal tissue is disposed of by interment or cremation, without reference to the exceptions contained in the Act, and further states that “an

abortion patient may by written consent authorize the physician performing the abortion to dispose of the human remains by burial or cremation”

82. The requirement that embryonic or fetal tissue that is not handled through one of the exceptions be interred or cremated impermissibly burdens women seeking abortions because it requires treating embryonic or fetal tissue in ways analogous to funeral rituals ordinarily performed for human bodies, and by extension, endorses the view that embryos are people, regardless of the woman’s own views. The Consent for Disposition Regulation goes even further by requiring that women engage in a discussion and decisionmaking process that is founded on the State’s view of personhood.

83. Both of the emergency regulations promulgated in response to H.B. 815 further state that the requirements for interment or cremation “shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.” When the emergency regulations expire, if LDH has not promulgated permanent rules establishing that H.B. 815’s requirement for interment or cremation of embryonic or fetal tissue does not apply to first trimester medication abortions, medication abortion will once again be banned by H.B. 815.

84. H.B. 815 mandates embryonic or fetal tissue disposition requirements on physicians performing an abortion—but not on physicians providing miscarriage management, nor on women experiencing miscarriage.

85. S.B. 33 prohibits the “sale, receipt, or transport of fetal organs and body parts,” including by donation, which are obtained through abortion. This includes parts as small as “a

cell.” S.B. 33 contains the same language with regards to disposition or the provision of tissue for pathological examination or law enforcement purposes as H.B. 815.

86. The penalty for violating S.B. 33 is “a term of imprisonment at hard labor for not less than ten nor more than fifty years,” and a fine of up to fifty thousand dollars.

87. Both H.B. 815 and S.B. 33 prohibit women who choose abortion from consenting to the donation of their fetal tissue for scientific research, but do not impose the same prohibition on women who suffer miscarriage.

88. H.B. 815 also sets forth legislative findings stating that allowing women who opt for abortion to donate fetal tissue “constitutes unethical undue influence and coercion, and amounts to incentive to actively participate in the killing of a living human being,” and that allowing such donation is “a gross violation of ethical norms,” distinct from such donation in the context of miscarriage, which the bill implies may be “ethical and proper.” The legislative findings of H.B. 815 thus express the belief that women seeking abortions, unlike women experiencing a miscarriage, are incapable of making informed decisions about the disposition of embryonic or fetal tissue.

H.B. 386 and the Related Provisions of the Emergency Regulation

89. H.B. 386 requires a woman to wait at least seventy-two hours after being given all the information necessary to grant her informed consent to an abortion before permitting her to grant that consent.

90. The Delay Regulation adopts this requirement into the regulations governing licensed abortion facilities.

91. Thus, women seeking abortion, uniquely among medical procedures, will be prevented from being able to grant informed consent for the procedure they seek for three days after becoming able to do so. No other Louisiana law prohibits a competent adult from granting informed consent to any other medical procedure for any period of time, let alone three days.

92. H.B. 386 and the Delay Regulation thus treat pregnant women considering abortion as less competent than any other capable adult making any other medical decision. This is an affront to the dignity and autonomy of women.

93. Delays in obtaining abortion care, such as those imposed by H.B. 386 and the Delay Regulation, expose women to greater health risks associated with later abortions and longer pregnancies, and increase anxiety, suffering, and expense.

94. H.B. 386 and the Delay Regulation will also force doctors to violate tenets of medical ethics, by withholding care for no medical reason.

95. Other Louisiana law limits the performance of abortion to before 22 weeks lmp. Under H.B. 386 and the Delay Regulation, women who come to a clinic seeking abortion at 21 weeks, 3 days lmp or later will thus be unable to obtain abortion.

96. Similarly, women who come to a clinic seeking abortion care shortly before any point at which an abortion procedure becomes more complex, costly, or risky will be pushed into that procedure. For example, women who come three days before the end of the first trimester will instead have to have a second trimester procedure. Likewise, women who come to a clinic within three days of the date at which it ceases to offer medication abortion—which is currently FDA-approved until 10 weeks lmp—will be deprived of the choice of medication abortion at that clinic.

97. Women seeking abortion care after 16 weeks, 3 days lmp will face even further hurdles. On information and belief, Doe 2 is the only physician in Louisiana providing abortion care after 16 weeks, 6 days. Thus, H.B. 386 and the Delay Regulation will require Louisiana women seeking abortion after 16 weeks, 3 days to go to Bossier. The distances from Bossier to the state's two largest metropolitan areas, Baton Rouge and New Orleans, are about 250 miles and about 325 miles, respectively. Currently, women from these and other distant parts of the state typically endure the 24-hour waiting period required under current state law in a local hotel, as two back-to-back round trips of 500-650 miles is neither economical nor practical. H.B. 386 and the Delay Regulation will now compel many of these women to undergo a longer, multi-day hotel stay, or make this trip twice. They will have to pay for more travel costs and incidentals. Some will also incur additional lost income from added time spent away from work, additional child care expenses, and other expenses related to longer time away from home.

98. Although both H.B. 386 and the Delay Regulation contain a provision waiving two of the required three days of delay for women who live more than 150 miles from a licensed abortion clinic, it will do nothing for women traveling from Baton Rouge or New Orleans seeking abortion care at Bossier after 16 weeks, 3 days. This is because these cities have licensed abortion facilities, but they do not provide care after 16 weeks, 6 days. Therefore, the exception for women who live more than 150 miles from a clinic would not apply to these women.

H.B. 488

99. H.B. 488 prohibits any person from providing an abortion unless they are a physician board-certified in obstetrics and gynecology or family medicine, or a resident training under such a physician.

100. A person violating this section is liable for imprisonment of up to two years, a fine of up to one thousand dollars, professional discipline, a wrongful death suit by the patient, and liability for malpractice regardless of whether malpractice was committed.

101. No other Louisiana law requires a physician performing any outpatient procedure other than an abortion, or prescribing any medication other than to induce an abortion, to be a board-certified specialist.

102. H.B. 488 limits, without medical justification, the pool of physicians eligible to perform abortion and thus makes it even more difficult for women to obtain abortion in their own communities. By extension, it also limits, without medical justification, the pool of physicians the Clinic Plaintiffs may hire to perform abortions. It thus reduces women's access to abortions in Louisiana by exacerbating the current shortage of physicians providing abortions in Louisiana, and it threatens the ongoing viability of Clinic Plaintiffs, by limiting their ability to replace departing physicians and to hire new ones.

H.B. 606

103. H.B. 606 prohibits any state agency, official, employee, or subdivision from “contract[ing] with, award[ing] any grant to, or otherwise bestow[ing] any funding upon, an entity or organization that performs abortions, or that contracts with an entity or organization that performs abortions,” except for abortions to prevent the death of the patient, in cases of rape or incest, or when the pregnancy is “medically futile.”

104. Therefore, H.B. 606 prohibits any government entity from contracting with, or providing funding to entities that offer abortions except in the narrow circumstances outlined above, as well as the flow of state or local funds to third-party entities that contract with such abortion providers.

105. An entity, such as a vendor, that seeks to do business with a state agency or a state subdivision is therefore ineligible to do so if it also contracts with abortion providers, including Plaintiff Clinics.

106. The entire government of Louisiana, and all local governments in this state, collectively, bestow billions of dollars of business and funding on the private sector each year. They are therefore a many-fold larger potential source of revenue for vendors and others wishing to do business with the state or receive state funds, than are the state's four remaining abortion clinics.

107. H.B. 606 thus forces every entity in the State of Louisiana into the Hobson's choice of being eligible to do business with, or receive funds from, the entire state and local public sector, or to be able to contract with abortion clinics.

108. Accordingly, it threatens abortion clinics' contracts with government entities, and their business relationships with all of their vendors, on whom they depend for a vast array of essential services, from facilities maintenance to the purchase of medication and supplies to the cleaning of soiled medical linen, among many others.

109. If government entities or vendors refuse to contract with abortion clinics, including Plaintiffs, all Louisiana's abortion clinics will close, and there will no longer be access to legal abortion in Louisiana. The State will therefore be able to accomplish indirectly what it cannot do directly—prevent abortion clinics from operating and providing constitutionally-protected abortion services to Louisiana women.

110. Prohibiting the Plaintiff Clinics from contracting for essential services and prohibiting the state from paying or funding any entity that contracts with Plaintiff Clinics serves no rational state interest.

111. Additionally, H.B. 606 imposes a legal stigma on abortion clinics, isolating them by singling them out to Louisiana businesses as uniquely unqualified entities with whom to contract.

THE CUMULATIVE IMPACT OF THE 2016 RESTRICTIONS

The regulatory environment in Louisiana

112. In addition to the impact of the individual challenged statutes and regulations, outlined above, the 2016 Restrictions cumulatively impose greater burdens on abortion in Louisiana than does each taken alone.

113. The 2016 Restrictions are part of a regulatory system aimed at virtually every conceivable point of obstruction in abortion care delivery in Louisiana, with the expectation and intention that, by closing off as many critical points as possible, abortion clinics will progressively shut down, physicians who currently provide abortion care will become progressively unable to do so, new physicians will find the hurdles to beginning to provide abortion care too great, women will find it increasingly hard to obtain the abortion care they seek, and access to legal abortion in Louisiana will become increasingly unavailable, until it does not exist in practice, while remaining legal in theory.

114. Parts of this effort to regulate abortion out of existence include laws passed before the 2016 legislative session, which, although not challenged here, form the background against which the 2016 Restrictions were written, and which together create the most restrictive regulatory scheme in the nation. Prior to the passage of the 2016 Restrictions, Louisiana had codified both a statement opposing legalized abortion and a criminal ban on abortion, with a penalty of up to ten years' imprisonment at hard labor, to take effect immediately if *Roe v. Wade* is ever overturned. Other existing regulations provide that twenty-four hours before an abortion, a woman receive an ultrasound, whether or not medically necessary, a narration of the ultrasound

image, and state-written materials designed to discourage abortion, and have a discussion about the abortion with a physician (and not any other licensed healthcare professional such as a counselor or physician assistant). Physicians who provide abortions are excluded from the protections of the state's malpractice reform law. Health insurance purchased through the state exchange is not allowed to cover abortion. Public funds may not be used to pay for abortion except when a woman's life is in danger or when she has reported being a victim of rape or incest both to law enforcement and to a physician who has certified the report. Discrimination against physicians who provide abortions is legal, but discrimination against physicians who refuse to do so is prohibited. A law passed in 2014, requiring that all physicians performing abortions have active admitting privileges within 30 miles of the abortion facility, has been challenged and is currently preliminarily enjoined. Louisiana House Bill 388, Regular Session (2014) (Act 620), codified at La. Rev. Stat. § 40:1299.35.2 (the "2014 Admitting Privileges Requirement").

115. Legislators made clear in their debate over the 2016 Acts that their intention was to further regulate abortion until it becomes impossible to perform. Senator John Milkovich, who voted in favor of each of the 2016 Acts, aptly summed up the Legislature's purpose in passing them, stating in debate over H.B. 1019, "we've had about five decisive votes on stopping abortion"

116. On or about June 8, 2016, Defendant Attorney General Landry sent an unsolicited letter to every abortion clinic in Louisiana, including the Clinic Plaintiffs. The letter attaches a list of dozens of abortion clinic regulations in the Louisiana Revised Statutes. The list of these regulations alone amounts to three pages. The letter states Defendant Landry's expectation that "your organization will respect and comply with these provisions." It concludes, "[i]n the event

your organization fails to observe the law and regulations of the State, legal action may follow.”

Neither the letter nor the list indicate that many of the regulations embraced within the list, including the 2014 Admitting Privileges Requirement, are enjoined, and therefore Clinic Plaintiffs are not obligated to “respect and comply with” them. Upon information and belief, Defendant Landry has not sent letters of this kind to recipients other than abortion clinics.

Obstacles imposed in the path of women seeking abortions

117. The cumulative impact of H.B. 1081 and H.B. 815 (in the absence of a permanent regulation excluding medication abortion), each of which bans a method of abortion, impose a greater burden on women than each act individually. Together, they would ban the methods of abortion currently chosen by a significant percentage of the women obtaining abortions in Louisiana. This leaves suction aspiration, which is currently used in somewhat less than two-thirds of abortions, and which is not available after very early in the second trimester, as the only commonly-used method of abortion available in Louisiana.

118. H.B. 386 (and the related provisions of the emergency regulation) and H.B. 1081 impose a cumulative impact on women seeking abortion care after about 15 weeks greater than each bill taken individually. H.B. 1081 prohibits the performance of a D&E—a second trimester procedure—without first performing an additional procedure that, before 18 weeks, is unnecessary, untested, and risky. The delay imposed by H.B. 386 will force more women into the second trimester who would otherwise have had an abortion in the first. The result is that some women who would have had an uncomplicated, first trimester procedure will now be forced to undergo an experimental and complicated second trimester one.

119. H.B. 386 and the physician shortage caused by H.B. 488 (and by the 2014 Admitting Privileges Requirement, should it ever take effect) also impose a cumulative burden

on women greater than each act taken individually. For women seeking abortion services at Hope Clinic after 13 weeks, 6 days lmp, there is only one physician available, Doe 3. Pursuant to the Louisiana State Board of Medical Examiners' Advisory Opinion, *see supra* ¶¶ 34-37, Hope's other physician, Doe 1, only offers abortion care up to 13 weeks, 6 days lmp, as he is a family physician and not an ob-gyn. Doe 3 only works at Hope two days per week, Thursdays and Saturdays. Thus, a woman seeking an abortion after 13 weeks, 6 days lmp at Hope is likely to face a longer than three-day wait to obtain one. Patients whose first visit falls on a Friday will face a four-day wait, until the following Tuesday. Patients whose first visit falls on a Tuesday or Thursday will face a five-day wait. Patients whose first visit falls on a Wednesday will face a six-day wait.

120. Doe 3 cannot increase the number of days he works at Hope because he also has a private ob-gyn practice, through which he is able to keep and maintain his admitting privileges, which he is required to keep by the 2014 Admitting Privileges Requirement. Since the 2014 Admitting Privileges Requirement was signed into law, none of the other abortion providers in the Shreveport area, who unlike Doe 3 do not maintain separate, non-abortion practices, have been able to obtain the required admitting privileges in the area around Shreveport.

121. Likewise, Hope has been unable to hire physicians to provide coverage on additional days because they have been unable to find willing physicians who satisfy the Louisiana State Board of Medical Examiners' criteria and either have admitting privileges or are willing to risk taking a job that they might have to leave if the admitting privileges requirement takes effect. This difficulty will only be compounded if H.B. 488 were to take effect.

122. Similarly, Doe 2 works Tuesdays through Saturdays. Thus, under H.B. 386, women who go to Bossier, and receive all the information necessary for them to be able to grant

their informed consent on Thursdays and Fridays, would be required to wait four or five days, respectively, before obtaining abortion care.

123. The impact of these obstacles will be to impose further delay-related risks, anxieties, costs, and suffering on women seeking abortions, than those imposed by H.B. 386 taken alone.

Impact on the availability of provision of abortion services in Louisiana

124. A number of the challenged restrictions cumulatively threaten the availability of abortion services in Louisiana.

125. The 2014 Admitting Privileges Requirement and H.B. 488 are focused on restricting the pool of physicians. Cumulatively, they make it extremely difficult for Plaintiff Clinics, or any facility that offers abortion care, to hire physicians to provide abortions.

126. It is already difficult for abortion clinics in Louisiana to find physicians willing to provide abortions, due in great part to the fact that the State of Louisiana has made providing this service unreasonably difficult, legally risky, and fundamentally uncertain as a profession, as well as to the climate of harassment and violence around abortion. The 2014 Admitting Privileges Requirement is an example of this uncertainty, although it has not taken effect, because physicians without local admitting privileges cannot begin an abortion practice unless they are willing to assume the risk that they will have to give it up, should it become effective. Similarly, former LDH Secretary Kathy Kliebert's decision to deny, in January 2015, a license to an applicant seeking to open an abortion clinic on the basis that it had not shown an adequate need for a new facility, only to unilaterally withdraw the "certificate of need" requirement a few months after applying it, has created uncertainty around the ability to open any new clinics, and to staff them. H.B. 488 further adds to these difficulties by requiring physicians (with the

exception of residents in training) to be board-certified ob-gyns or family physicians. Together, these provisions limit the pool of health care providers eligible to perform abortions to a tiny fraction of Louisiana health care providers.

127. These provisions greatly complicate clinics' ability to replace departing physicians and hire new ones. Hope Clinic has in the past utilized the services of physicians, trained in providing abortion care, who cannot now provide abortion services under the cumulative requirements of the 2014 Admitting Privileges Requirement and H.B. 488. Hope has been unable to hire additional physicians to provide abortion services for several years. If Louisiana abortion clinics are unable to hire new physicians to replace physicians who retire or move away, they will be unable to keep their doors open.

128. The impact of physician shortages created by the cumulative effect of the 2014 Admitting Privileges Requirement and H.B. 488 is likely to be particularly severe on access to second trimester abortion care. Not all physicians are trained to provide second trimester abortions, so the limitations imposed by these laws will further diminish an already small pool. Currently, the only clinic offering abortion services after 16 weeks, 6 days Imp is Bossier, where just one physician offers abortion care. Bossier is unlikely to keep its doors open if that doctor has to cease providing services. Its closure would end the provision of abortion care in Louisiana after 16 weeks, 6 days Imp.

129. H.B. 1019 further complicates' clinics ability to retain physicians. By casting a legal cloud over physicians who currently work at abortion clinics unless and until LDH writes its "informational document," H.B. 1019 increases the likelihood that physicians may seek other employment, and thus be unable to return to abortion practice if and when the cloud is removed.

Given the physician shortage imposed by the 2014 Admitting Privileges Requirement and H.B. 488, these losses may be irreplaceable, resulting in the clinics' permanent closure.

130. Finally, as discussed, H.B. 606 inhibits clinics' ability to continue providing services by threatening the loss of any contracts they have with government entities and all their business relationships.

131. The cumulative impact of these restrictions is to severely threaten the ongoing availability of abortion services in Louisiana sufficient to meet the need. With only five physicians offering abortion services at four clinics, the loss of any further physicians or facilities would create a shortage resulting in lengthy delays and the denial of care to women. This recently occurred when the 2014 Admitting Privileges Requirement briefly took effect between February 24 and March 4 of this year. During a period of only nine days, when only two doctors were offering abortion care at only two clinics in Louisiana, wait times grew exponentially, and some patients were turned away from clinics.

IRREPARABLE INJURY

H.B. 1081

132. Plaintiffs' and their patients will suffer irreparable harm from the violation of Plaintiffs' and their patients' constitutional rights if H.B. 1081 goes into effect.

133. H.B. 1081 will burden the health and safety of women seeking second trimester abortions by forcing them to undergo more complex and risky procedures, including the possibility of having to undergo untested medical procedures, invasive digoxin injections, or inpatient labor and delivery.

H.B. 1019 and the Related Provisions of the Emergency Regulations

134. Plaintiffs and their patients will suffer irreparable harm from the violation of Plaintiffs' and their patients' constitutional rights if H.B. 1019 is enforced.

135. H.B. 1019 may be read as a criminal ban on virtually all abortions, unless and until LDH develops and distributes its "informational document" regarding "fetal genetic abnormality" and "children born with disabilities."

136. H.B. 1019 forces all women obtaining abortions in the state of Louisiana to receive this document even though it is irrelevant for the vast majority of them. Forcing women to receive this irrelevant information could also be confusing, and suggests to women that they are not receiving the individualized, well-informed medical care that they are entitled to in any medical setting. In addition, H.B. 1019 stigmatizes women seeking abortions for reason of genetic abnormality.

137. Additionally, H.B. 1019 bans some women seeking pre-viability abortions at 22 weeks or later on the ground that the Legislature disapproves of their reason for seeking the abortion, thus depriving women of their autonomy and denying them their ability to make decisions as competent adults.

H.B. 815, S.B. 33, and the Related Provisions of the Emergency Regulations

138. Plaintiffs and their patients will suffer irreparable harm from the violation of Plaintiffs' and their patients' constitutional rights if H.B. 815 and the related emergency regulations go into effect.

139. H.B. 815 and the Consent for Disposition Regulation force women to accept the State's view of fetal personhood and the requirement of funeral rituals, regardless of the woman's own views, in violation of her liberty interests in making reproductive decisions.

140. The Consent for Disposition Regulation imposes unnecessary and burdensome requirements on women seeking abortions by requiring that information on disposition be delivered both orally and in writing, only by a physician, and requiring the woman's written consent regarding her choice as to disposition.

141. H.B. 815 on its face bans medication abortion, thus denying women a safe first trimester abortion option, and forcing them to accept a surgical procedure, for no medical reason, and even where medication abortion is medically indicated due to a woman's particular circumstances. Uncertainty about the availability of medication abortion will persist so long as its legality hinges on the emergency regulations, which are time-limited.

142. H.B. 815, the emergency regulations, and S.B. 33 irrationally deny women who have had an abortion the ability to donate fetal tissue, and to determine how embryonic or fetal tissue will be disposed of, while permitting women who have experienced a miscarriage to do so.

143. H.B. 815, the emergency regulations, and S.B. 33 stigmatize women who choose abortion by prohibiting them from donating fetal tissue, and from determining how the embryonic or fetal tissue will be disposed of, while permitting women who have experienced a miscarriage to do so.

144. S.B. 33 also stigmatizes and discriminates against physicians who perform abortions by providing among the harshest legal penalties—decades of imprisonment at hard labor—for disposing of an embryo or fetus in a manner that would be legal if produced through miscarriage.

H.B. 386 and the Delay Regulation

145. Plaintiffs' patients will suffer irreparable harm from the violation of Plaintiffs' patients' constitutional rights if H.B. 386 and the Delay Regulation go into effect.

146. H.B. 386 will force women to wait at least three days, and in practice many will be forced to wait more, between the time they have all the information necessary to grant their informed consent to an abortion and the time they are allowed to grant that consent. By denying women a time-sensitive medical procedure at the time they are able to consent to it, H.B. 386 and the Delay Regulation deprive women of their autonomy over their persons and of their dignity as patients, with no medical justification.

147. The delays imposed by H.B. 386 and the Delay Regulation threaten women's health. The delays also impose numerous burdens on women and their families in the form of unnecessary and unjustified anxiety, suffering, and expense.

H.B. 488

148. Plaintiffs and their patients will suffer irreparable harm from the violation of Plaintiffs' patients' constitutional rights if H.B. 488 goes into effect.

149. H.B. 488 greatly limits the pool of physicians able to offer abortion care in Louisiana, and thereby limits Clinic Plaintiffs' ability to hire and retain physicians to provide abortions, with no corresponding health benefit for women seeking abortions.

150. The number of physicians offering abortion care in Louisiana's abortion clinics is now so low that the loss of even one more physician will result in a deep shortage of abortion care providers in Louisiana.

151. Reducing the number of such physicians by even one further would result in long waits throughout the state, and the denial of abortion care for some women.

H.B. 606

152. Plaintiffs and their patients will suffer irreparable harm from the violation of Plaintiffs' and their patients' constitutional rights if H.B. 606 goes into effect.

153. H.B. 606 prohibits any government entity from contracting with Plaintiffs and therefore jeopardizes their ability to enter into contracts for critical services, thus threatening their ability to remain in business.

154. H.B. 606 also forces every business in the State of Louisiana into the Hobson's choice of being eligible to do business with the entire state and local public sector, or with abortion clinics.

155. Accordingly, it threatens abortion clinics' business relationships with all of its vendors, on whom they depend for a vast array of essential services, from facilities maintenance to the sale of medication and supplies, among many others.

156. If government entities refuse to contract for critical services or if vendors refuse to contract with abortion clinics, including Plaintiff Clinics, because they wish to remain eligible to work with the public sector in Louisiana, all Louisiana's abortion clinics will close, and there will no longer be access to legal abortion in Louisiana.

157. Additionally, H.B. 606 irrationally discriminates against Plaintiffs, and stigmatizes the provision of abortion care, by categorizing Plaintiffs as uniquely unqualified for others to do business with in the state of Louisiana.

The challenged acts and regulations, cumulatively

158. Together, the 2016 Restrictions will impose irreparable harm on Plaintiffs and their patients from a violation of their constitutional rights that is greater than the violations imposed by each challenged restriction taken alone.

159. Collectively, and in conjunction with what is already among the most restrictive scheme of abortion regulations in the nation, the 2016 Restrictions impose a web of requirements with which women and abortion clinics cannot hope to comply.

160. The 2016 Restrictions create threats to the availability of abortion in practice throughout the state.

161. The 2016 Restrictions threaten the existence of clinics by further restricting their ability to hire physicians and exacerbating the existing shortage of physicians willing and able to provide abortions.

162. The 2016 Restrictions threaten the existence of clinics by imposing multiple, overlapping bans on abortions and types of abortion procedures, and imposing expensive and time-consuming burdens on patients, which some may not be able to overcome, or may seek to overcome by going out-of-state, thus reducing the clinics' flow of patients.

163. The 2016 Restrictions threaten the existence of clinics by threatening their ability to contract for critical services and by threatening to make it impossible for the Clinic Plaintiffs do business with third parties.

164. The 2016 Restrictions' collective burden on women seeking abortion is to impose numerous, medically unnecessary restrictions on abortion methods and practices which will prevent many from obtaining abortion services altogether, reduce the number of procedure options available to them, impose lengthy and costly delays in obtaining abortion care, and increase health risks, suffering, and anxiety.

165. The 2016 Restrictions cumulatively discriminate against and stigmatize physicians who offer abortion care and women who seek it, labeling both as uniquely untrustworthy, incapable, and marginalized.

CLAIMS FOR RELIEF

COUNT I—H.B. 1081

(Substantive Due Process—Right to Liberty)

166. The allegations of paragraphs 1 through 165 are incorporated as though fully set forth herein.

167. H.B. 1081 violates Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because it has the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

168. H.B. 1081 violates Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution by compelling them to undergo an invasive, unnecessary medical procedure.

COUNT II—H.B. 1081

(Equal Protection)

169. The allegations of paragraphs 1 through 168 are incorporated as though fully set forth herein.

170. H.B. 1081 violates Plaintiffs' patients' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution by compelling women seeking abortions, but no other medical patients, to undergo an invasive, unnecessary medical procedure.

171. H.B. 1081 violates Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution by compelling them to perform an invasive,

unnecessary medical procedure, against their medical judgment, on pregnant women seeking abortions, but on no other patients.

COUNT III—H.B. 1019 and the Related Provisions of the Emergency Regulation

(Substantive Due Process—Right to Liberty and Vagueness)

172. The allegations of paragraphs 1 through 171 are incorporated as though fully set forth herein.

173. H.B. 1019 and related amendments in the emergency regulation amending LAC 48:I.4431 violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because they have the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

174. H.B. 1019 and related amendments in the emergency regulation amending LAC 48:I.4431 violate Plaintiffs' right to liberty and due process as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because they impose conditions on the performance of legal abortion with which it is impossible to comply.

COUNT IV—H.B. 815, S.B. 33 and the Related Emergency Regulations

(Substantive Due Process—Right to Liberty)

175. The allegations of paragraphs 1 through 174 are incorporated as though fully set forth herein.

176. H.B. 815, S.B. 33, the related amendments in the emergency regulation amending LAC 48:I.4431, and the emergency regulation creating LAC 51:XXVI.102, violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth

Amendment to the U.S. Constitution because they have the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

COUNT V—H.B. 815 and S.B. 33 and the Related Emergency Regulations

(Equal Protection)

177. The allegations of paragraphs 1 through 176 are incorporated as though fully set forth herein.

178. H.B. 815 and S.B. 33 and the related provisions in the emergency regulation amending LAC 48:I.4431, and the emergency regulation creating LAC 51:XXVI.102, violate Plaintiffs' patients' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution by prohibiting pregnant women seeking abortions, but no other patients with pregnancy loss, from determining how their fetus or embryo is disposed of, and from donating their fetus or embryo for scientific research.

179. H.B. 815 and S.B. 33, and the related provisions in the emergency regulation amending LAC 48:I.4431, and the emergency regulation creating LAC 51:XXVI.102, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution by irrationally classifying the disposition of their patients' fetuses or embryos lost through abortion differentially from their patients' fetuses or embryos lost through miscarriage.

COUNT VI—H.B. 386 and the Delay Regulation

(Substantive Due Process—Right to Liberty)

180. The allegations of paragraphs 1 through 179 are incorporated as though fully set forth herein.

181. H.B. 386 and the Delay Regulation violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because they have the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

COUNT VII—H.B. 488

(Substantive Due Process—Right to Liberty)

182. The allegations of paragraphs 1 through 181 are incorporated as though fully set forth herein.

183. H.B. 488 violates Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because it has the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

COUNT VIII—H.B. 606

(Substantive Due Process—Right to Liberty)

184. The allegations of paragraphs 1 through 183 are incorporated as though fully set forth herein.

185. H.B. 606 violates Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution because it has the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

COUNT IX—H.B. 606

(Due Process—Unconstitutional Condition)

186. The allegations of paragraphs 1 through 185 are incorporated as though fully set forth herein.

187. H.B. 606 violates Plaintiffs' and their patients' right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution by denying Plaintiffs the ability to contract with government entities, or with third parties who contract with government entities, because of their exercise of their own constitutionally protected right to provide abortions and their patients' exercise of the constitutional right to choose to have an abortion.

COUNT X—H.B. 606

(Equal Protection)

188. The allegations of paragraphs 1 through 187 are incorporated as though fully set forth herein.

189. H.B. 606 violates Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution by threatening the ability of Plaintiffs to contract for critical services that are necessary to operate and by irrationally imposing discriminatory impediments on their ability to contract with third parties.

COUNT XI—The 2016 Restrictions

(Substantive Due Process—Right to Liberty)

190. The allegations of paragraphs 1 through 189 are incorporated as though fully set forth herein.

191. The 2016 Restrictions cumulatively violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the U.S.

Constitution because they have the unlawful purpose and effect of imposing an undue burden on women's right to choose abortion before viability.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. declare the 2016 Restrictions, individually and cumulatively, unconstitutional under the Fourteenth Amendment to the United States Constitution;
2. without bond, enjoin Defendants, their employees, agents, and successors in office from enforcing the 2016 Restrictions, individually and cumulatively;
3. award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
4. grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Respectfully submitted this 16th day of December, 2016.

/s/ William E. Rittenberg
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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2016, a copy of the foregoing First Amended Complaint, and all of its attachments and exhibits, was served upon all counsel of record in this action by electronic service through the Court's CM/ECF system.

I further certify that on this 16th day of December, 2016, a copy of the foregoing First Amended Complaint, and all of its attachments and exhibits, was sent to the following party via FedEx, and will also be served on the following party via process server:

Jay Dardenne
Commissioner of Administration
Division of Administration
1201 N. Third Street, Ste. 7-210
Baton Rouge, LA 70802

/s/ Janet Crepps

Exhibit A

ENROLLED

ACT No. 264

2016 Regular Session

HOUSE BILL NO. 1081

BY REPRESENTATIVES MIKE JOHNSON, ABRAHAM, AMEDEE, ARMES, BAGLEY, BARRAS, BERTHELOT, BILLIOT, BISHOP, BROADWATER, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, ROBBY CARTER, STEVE CARTER, CHANEY, CONNICK, COUSSAN, COX, CROMER, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, FOIL, FRANKLIN, GAROFALO, GUINN, HALL, LANCE HARRIS, HAVARD, HAZEL, HENRY, HENSGENS, HILFERTY, HILL, HODGES, HOFFMANN, HOLLIS, HORTON, HOWARD, HUVAL, IVEY, JACKSON, JAMES, JEFFERSON, JENKINS, ROBERT JOHNSON, JONES, NANCY LANDRY, LEBAS, LEOPOLD, LOPINTO, LYONS, MACK, MAGEE, MCFARLAND, MIGUEZ, DUSTIN MILLER, GREGORY MILLER, MONTOUCET, JAY MORRIS, JIM MORRIS, NORTON, PEARSON, PIERRE, POPE, PUGH, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SCHRODER, SHADOIN, STOKES, TALBOT, THIBAUT, WHITE, WILLMOTT, AND ZERINGUE AND SENATORS ALARIO, APPEL, BARROW, CORTEZ, DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, LAMBERT, LONG, MILKOVICH, MILLS, MIZELL, PEACOCK, PERRY, RISER, GARY SMITH, JOHN SMITH, THOMPSON, WALSWORTH, WARD, AND WHITE

1 AN ACT

2 To enact R.S. 40:1061.1.1, relative to regulation of abortion; to provide for defined terms
3 including "dismemberment abortion"; to prohibit performance of dismemberment
4 abortions; to provide penalties for violations of the prohibition; to provide relative
5 to legal proceedings pursuant to violations of the prohibition; to provide for
6 construction of certain provisions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1061.1.1 is hereby enacted to read as follows:

9 §1061.1.1. Louisiana Unborn Child Protection from Dismemberment Abortion Act

10 A. This Section shall be known and may be cited as the "Louisiana Unborn
11 Child Protection from Dismemberment Abortion Act".

12 B. As used in this Section, the following terms have the meaning ascribed
13 in this Subsection:

14 (1) "Abortion" shall have the meaning ascribed in R.S. 40:1061.9.

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1 (2) "Attempt to perform an abortion" means to do or omit to do anything
2 that, under the circumstances as the actor believes them to be, is an act or omission
3 constituting a substantial step in a course of conduct planned to culminate in
4 oneself's performing an abortion. Such substantial steps include, but are not limited
5 to:

6 (a) Agreeing with an individual to perform an abortion on that individual or
7 on some other person, whether or not the term "abortion" is used in the agreement,
8 and whether or not the agreement is contingent on another factor such as receipt of
9 payment or a determination of pregnancy.

10 (b) Scheduling or planning a time to perform an abortion on an individual,
11 whether or not the term "abortion" is used, and whether or not the performance is
12 contingent on another factor such as receipt of payment or a determination of
13 pregnancy.

14 (c) The definition provided in this Paragraph shall not be construed to
15 require that an abortion procedure must actually be initiated for an attempt to occur.

16 (3)(a) "Dismemberment abortion" means, with the purpose of causing the
17 death of an unborn child, to purposely dismember a living unborn child and extract
18 him or her one piece at a time from the uterus through use of clamps, grasping
19 forceps, tongs, scissors, or a similar instrument that, through the convergence of two
20 rigid levers, slices, crushes, or grasps a portion of the unborn child's body to cut or
21 rip it off or apart.

22 (b) The term "dismemberment abortion" does not include an abortion which
23 uses suction to dismember the body of an unborn child by vacuuming fetal parts into
24 a collection container, although it does include an abortion in which a
25 dismemberment abortion, as defined in this Paragraph, is used to cause the death of
26 an unborn child and suction is subsequently used to extract fetal parts after the death
27 of the unborn child.

28 (4) "Intentionally" means the person who acts either consciously desires the
29 physical result of his act, whatever the likelihood of that result happening from his

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1 conduct; or knows that the result is substantially certain to follow from his conduct,
 2 whatever his desire may be as to that result.

3 (5) "Physician" means a person licensed to practice medicine in the state of
 4 Louisiana who meets the requirements of R.S. 40:1061.10.

5 (6) "Serious health risk to the unborn child's mother" means that in
 6 reasonable medical judgment the mother has a condition that so complicates her
 7 medical condition that it necessitates the abortion of her pregnancy to avert her death
 8 or to avert serious risk of substantial and irreversible physical impairment of a major
 9 bodily function, not including psychological or emotional conditions. No such
 10 condition may be determined to exist if it is based on a claim or diagnosis that the
 11 woman will engage in conduct which she intends to result in her death or in
 12 substantial and irreversible physical impairment of a major bodily function.

13 (7) "Woman" means a female human being whether or not she has reached
 14 the age of majority.

15 C.(1) Notwithstanding any other provision of law, it shall be unlawful for
 16 any person to intentionally perform or attempt to perform a dismemberment abortion
 17 and thereby kill an unborn child unless necessary to prevent serious health risk to the
 18 unborn child's mother.

19 (2) No woman upon whom an abortion is performed or attempted to be
 20 performed shall be thereby liable for performing or attempting to perform a
 21 dismemberment abortion. No nurse, technician, secretary, receptionist, or other
 22 employee or agent who is not a physician but who acts at the direction of a
 23 physician, and no pharmacist or other individual who is not a physician but who fills
 24 a prescription or provides instruments or materials used in an abortion at the
 25 direction of or to a physician shall be thereby liable for performing or attempting to
 26 perform a dismemberment abortion.

27 D. Whoever violates the provisions of this Section shall be fined not more
 28 than one thousand dollars per incidence or occurrence, or imprisoned for not more
 29 than two years, or both. In addition to whatever remedies are otherwise available

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1 under the laws of this state, failure to comply with the provisions of this Section shall
 2 provide all of the following:

3 (1) A basis for a cause of action for civil damages for injuries and wrongful
 4 death as more fully set forth in Civil Code Articles 2315.1 and 2315.2, whether or
 5 not the unborn child was viable at the time the abortion was performed, or was born
 6 alive, except that such causes of action shall be maintained only by the following
 7 persons:

8 (a) The natural or biological father of the aborted infant or fetus, unless such
 9 father's criminal conduct caused the pregnancy.

10 (b) The mother of the aborted infant or fetus, subject to the provisions of
 11 Subsection F of this Section.

12 (c) The parents or guardian on behalf of the mother of the aborted infant or
 13 fetus if the mother was a minor at the time of the abortion, unless the parents or
 14 guardian consented to the dismemberment abortion.

15 (2) A basis for professional disciplinary action under R.S. 37:1261 et seq.

16 E.(1) A physician charged with an offense pursuant to this Section may seek
 17 a hearing before the Louisiana State Board of Medical Examiners on whether the
 18 physician's conduct was necessary to save the life of the mother whose life was
 19 endangered by a physical disorder, physical illness, or physical injury, including a
 20 life-endangering physical condition caused by or arising from the pregnancy itself.

21 (2) The findings concerning the issue provided for in Paragraph (1) of this
 22 Subsection are admissible on that issue at the trial of the physician. Upon motion of
 23 the physician, the court shall delay the beginning of the trial for not more than thirty
 24 days to permit such hearing to take place; however, this delay may be extended for
 25 good cause.

26 F. When requested, the court shall allow a woman to proceed using solely
 27 her initials or a pseudonym and may close any proceedings in the case and enter
 28 other protective orders to preserve the privacy of the woman upon whom the
 29 abortion was performed.

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1 G. Any person who is not a physician or not otherwise legally authorized by
2 the state to perform abortions, but who nevertheless directly performs a
3 dismemberment abortion, shall be subject to the provisions of this Section.

4 H. Nothing in this Section shall be construed as creating or recognizing a
5 right to abortion, or a right to a particular method of abortion.

6 Section 2. If any one or more provisions, sections, subsections, sentences, clauses,
7 phrases, or words of this Act or the application thereof to any person or circumstance is
8 found to be unconstitutional, the same is hereby declared to be severable in accordance with
9 R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such
10 unconstitutionality. The legislature hereby declares that it would have passed this Act, and
11 each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective
12 of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases,
13 or words be declared unconstitutional.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit B

ENROLLED

2016 Regular Session

ACT No. 563

HOUSE BILL NO. 1019

BY REPRESENTATIVES EDMONDS, ABRAHAM, AMEDEE, BAGLEY, BARRAS, BISHOP, TERRY BROWN, CARMODY, CHANEY, COUSSAN, COX, DEVILLIER, EMERSON, FALCONER, LANCE HARRIS, HENSGENS, HILFERTY, HILL, HOFFMANN, HOLLIS, HORTON, HUVAL, IVEY, MIKE JOHNSON, ROBERT JOHNSON, LEBAS, MIGUEZ, POPE, REYNOLDS, RICHARD, TALBOT, AND ZERINGUE AND SENATOR THOMPSON

1 AN ACT

2 To enact R.S. 40:1061.1.1, relative to regulation of abortion; to provide a definition of
3 genetic abnormality; to prohibit the performance of an abortion and any attempt to
4 perform an abortion when a pregnant woman seeks the abortion because of a genetic
5 abnormality of the unborn child; to provide for an exception regarding the life of the
6 mother; to require information on resources prior to an abortion when a pregnant
7 woman is aware of a genetic abnormality of the fetus; to provide for creation of a
8 resource document; to provide penalties for violations of the prohibition; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1061.1.1 is hereby enacted to read as follows:

12 §1061.1.1. Abortion based on genetic abnormality; prohibition

13 A. As used in this Section, the following terms have the meaning ascribed
14 in this Subsection:

15 (1)(a) "Abortion" shall have the meaning provided in R.S. 40:1061.9.

16 (b)(i) For purposes of this Section, "abortion" shall not include an abortion
17 performed when the pregnancy is diagnosed as medically futile.

18 (ii) For purposes of this Subparagraph, "medically futile" means that, in
19 reasonable medical judgement, the unborn child has a profound and irremediable
20 congenital or chromosomal anomaly that is incompatible with sustaining life after
21 birth. This diagnosis shall be a medical judgment certified in the pregnant woman's

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1 medical record by a reasonably prudent physician who is knowledgeable about the
 2 case and the treatment possibilities with respect to the medical conditions involved.

3 (2) "Genetic abnormality" means any defect, disease, or disorder that is
 4 inherited genetically. The term includes, without limitation, any physical
 5 disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, and any other
 6 type of physical, mental, or intellectual disability, abnormality, or disease.

7 (3) "Diagnosed" means a determination made by a physician based on the
 8 results obtained from any genetic screening or prenatal testing procedure to detect
 9 a genetic abnormality.

10 B. Notwithstanding any other provision of law, it shall be unlawful for any
 11 person to intentionally perform or attempt to perform an abortion of an unborn child
 12 of twenty or more weeks post-fertilization age, as provided for in R.S. 40:1061.1,
 13 with knowledge that the pregnant woman is seeking the abortion solely because the
 14 unborn child has been diagnosed with either a genetic abnormality or a potential for
 15 a genetic abnormality.

16 C.(1) It shall be unlawful for a person to intentionally perform or attempt to
 17 perform an abortion of an unborn child of less than twenty weeks post-fertilization
 18 age without first providing the pregnant woman with an informational document
 19 including resources, programs, and services for pregnant women who have a
 20 diagnosis of fetal genetic abnormality and resources, programs, and services for
 21 infants and children born with disabilities. The informational document provided for
 22 in this Subsection shall be given to the pregnant woman at the same time as the
 23 requirements in R.S. 40:1061.17(B).

24 (2) The Department of Health and Hospitals shall develop an informational
 25 document to comply with the mandate established in this Section to include
 26 resources, programs, and services for pregnant women who have a diagnosis of fetal
 27 genetic abnormality and resources, programs, and services for infants and children
 28 born with disabilities and shall make such information available to any requesting
 29 provider of women's health care services and shall maintain the information on a
 30 link on the department's website.

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1 D. Whoever violates the provisions of this Section shall be subject to the
2 penalties provided in R.S. 40:1061.29.

3 E. The provisions of this Section shall not apply whenever the abortion is
4 necessary to save the life of the mother.

5 Section 2. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without signature
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
9 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit C

ENROLLED

2016 Regular Session

ACT No. 593

HOUSE BILL NO. 815

BY REPRESENTATIVES STOKES, BAGLEY, COX, EDMONDS, HENSGENS, HOFFMANN, HORTON, ROBERT JOHNSON, MAGEE, DUSTIN MILLER, POPE, AND WILLMOTT AND SENATOR BARROW

1 AN ACT

2 To amend and reenact R.S. 40:1061.25, relative to human remains resulting from certain
3 abortion procedures; to require burial or cremation of remains resulting from
4 abortion; to prohibit the buying, selling, and any other transfer of the intact body of
5 a human embryo or fetus whose death was caused by an induced abortion; to prohibit
6 the buying, selling, and any other transfer of organs, tissues, or cells obtained from
7 a human embryo or fetus whose death was caused by an induced abortion; to
8 establish penalties for violation of such prohibitions; to provide relative to disposal
9 of remains resulting from abortion procedures; to provide findings; to provide for
10 construction; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 40:1061.25 is hereby amended and reenacted to read as follows:

13 §1061.25. ~~Disposal of remains~~ Remains; disposal in accordance with applicable
14 regulations; post-abortion harvesting of fetal organs prohibited; penalties

15 A. Each physician who performs or induces an abortion which does not
16 result in a live birth shall insure that the remains of the child are disposed of ~~in~~
17 ~~accordance with rules and regulations which shall be adopted by the Department of~~
18 ~~Health and Hospitals~~ by interment or cremation, in accordance with the provisions
19 of R.S. 8:651 et seq.

20 B. ~~The provisions of this Section shall not apply to, and shall not preclude,~~
21 ~~instances in which the remains of the child are provided for in accordance with the~~
22 ~~provisions of R.S. 8:651 et seq.~~ With respect to post-abortion harvesting of fetal
23 organs, tissues, and cells, the legislature hereby finds the following:

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1 (1) The United States Supreme Court decision of Roe v. Wade, 410 U.S. 113,
2 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973), and its progeny establish a constitutionalized
3 right of a woman to choose to terminate her pregnancy. However, the court has
4 never endorsed a right to harvest the body parts of unborn human beings, whether
5 for profit or donation.

6 (2) The protocol known commonly as the "dead donor rule" is a longstanding
7 ethical norm that protects the integrity of human organ donation by providing that
8 organ donors must be dead before procurement of organs begins, and that organ
9 procurement itself must not cause the death of the donor. The harvesting of organs,
10 tissues, and cells from unborn children whose deaths are directly caused by induced
11 abortion, as defined in R.S. 40:1061.9, violate the dead donor rule in both respects
12 due to the following conditions:

13 (a) The unborn children are alive when the fetal repositioning and crushing
14 point decisions are made by the abortion provider with the goal of procuring intact
15 fetal hearts, lungs, livers, brains, and other organs and tissues.

16 (b) The repositioning of the fetus and crushing above and below the thorax
17 to procure intact fetal organs, tissues, and cells is itself the cause of death of the
18 human being from whom the organs are then harvested.

19 (c) The human being whose fetal organs are procured does not have the
20 capacity to consent to organ donation, and proxy consent for donation by the unborn
21 child's mother is invalid given that the unborn child is alive at the time the consent
22 forms are signed.

23 (3) The practice of presenting fetal organ donation forms to pregnant women
24 considering their options constitutes unethical undue influence and coercion, and
25 amounts to an incentive to actively participate in the killing of a living human being
26 for the speculative and attenuated benefit of helping researchers.

27 (4) Regardless of whether prior proxy consent obtained from the mother is
28 ethical and proper for an unborn child whose death is imminent due to natural
29 miscarriage, it is a gross violation of ethical norms to unduly coerce a mother who
30 is considering pregnancy options to directly participate in the decision to cause the

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1 death of her living unborn child for the speculative and attenuated benefit that may
2 come from scientific experimentation.

3 (5) States are free to ban the practice of selling or donating the bodies of
4 human beings killed by abortion because federal law does not preempt that area of
5 law. Particularly, 42 U.S.C. 289g-1(e) allows for the conduct of fetal tissue
6 transplantation only in accordance with applicable state and local law.

7 C.(1) Except as provided in Subsection D of this Section, it shall be unlawful
8 for any person or entity to buy, sell, donate, accept, distribute, or otherwise transfer
9 or use for any purpose the intact body of a human embryo or fetus whose death was
10 knowingly caused by an induced abortion, or the human organs, tissues, or cells
11 obtained from a human embryo or fetus whose death was knowingly caused by an
12 induced abortion.

13 (2) Whoever violates the provisions of this Subsection shall be subject to
14 civil penalties relative to abortion, generally, provided in R.S. 40:1061.29.

15 D.(1) Nothing in this Section shall be construed to prohibit final disposition
16 of the bodily remains of the aborted human being in accordance with state law, or to
17 prohibit any conduct permitted under state law that is undertaken with any of the
18 following purposes:

19 (a) The purpose of providing knowledge solely to the mother, such as for
20 pathological or diagnostic purposes.

21 (b) The purpose of providing knowledge solely to law enforcement officers,
22 such as the case of an autopsy following a feticide.

23 (2) Nothing in this Section shall be construed to prohibit any transaction
24 related to the donation of bodily remains from a human embryo or fetus whose death
25 was caused by a natural miscarriage or stillbirth, in accordance with the guidelines
26 and prohibitions provided in applicable state and federal law.

27 E. Nothing in this Section shall be construed to alter generally accepted
28 medical standards, affect existing federal or state law regarding the practice of
29 abortion, or to create or recognize a right to abortion.

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1 Section 2. Any provision of this Act held to be invalid or unenforceable by its terms,
2 or as applied to any person or circumstance, shall be construed so as to give it the maximum
3 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,
4 in which event such provision shall be deemed severable in accordance with R.S. 24:175,
5 and shall not affect the remainder hereof or the application of such provision to other persons
6 not similarly situated or to other dissimilar circumstances.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit D

2016 Regular Session

ACT No. 196

ENROLLED

SENATE BILL NO. 33

BY SENATORS GATTI, ALARIO, BARROW, BISHOP, BROWN, CORTEZ, DONAHUE, ERDEY, FANNIN, HEWITT, LAFLEUR, LAMBERT, LONG, MARTINY, MILKOVICH, MILLS, MIZELL, PEACOCK, PERRY, RISER, GARY SMITH, TARVER, WALSWORTH, WARD AND WHITE AND REPRESENTATIVES AMEDEE, ARMES, BACALA, BAGLEY, BAGNERIS, BARRAS, BISHOP, CHAD BROWN, TERRY BROWN, CARMODY, CHANEY, CONNICK, COX, CROMER, DAVIS, EDMONDS, EMERSON, FALCONER, GAROFALO, GUINN, HILL, HODGES, HOFFMANN, HORTON, HOWARD, IVEY, JACKSON, MIKE JOHNSON, ROBERT JOHNSON, LEBAS, MAGEE, JAY MORRIS, PEARSON, POPE, PYLANT, SCHRODER, SEABAUGH, THIBAUT, WHITE, WILLMOTT AND ZERINGUE

1 AN ACT

2 To enact R.S. 14:87.3, relative to the sale and transport of fetal organs and body parts; to
3 prohibit the sale of fetal organs and body parts resulting from an induced abortion;
4 to prohibit the transport of fetal organs and body parts with the intent to engage in
5 a prohibited sale; to provide definitions; to provide penalties; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:87.3 is hereby enacted to read as follows:

9 **§87.3. Prohibited sale, receipt, or transport of fetal organs and body parts**

10 **A. No person may knowingly and for money, including but not limited**
11 **to fees for storage or handling, any payments for reimbursement, repayments,**
12 **or compensation, or any other consideration:**

13 **(1) Buy, sell, receive, or otherwise transfer or acquire a fetal organ or**
14 **body part resulting from an induced abortion.**

15 **(2) Transport with the intent to sell or otherwise transfer a fetal organ**
16 **or body part resulting from an induced abortion.**

17 **(3) Transport a fetal organ or body part resulting from an induced**
18 **abortion that has been acquired by any person via any transaction prohibited**
19 **by this Section.**

20 **B. For purposes of this Section:**

21 **(1) "Receive" includes acquiring any fetal organ or fetal body part, or**

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1 the rights to any fetal organ or fetal body part, through an act of donation or
2 sale via any transaction prohibited by this Section.

3 (2) "Fetal body part" means a cell, tissue, organ, or other part of an
4 unborn child who is aborted by an induced abortion.

5 (3) "Unborn child" means any individual of the human species from
6 fertilization and implantation until birth.

7 (4) "Induced abortion" means the act of using or prescribing any
8 instrument, medicine, drug, or any other substance, device, or means with the
9 intent to terminate the clinically diagnosable pregnancy of a woman with
10 knowledge that the termination by those means will, with reasonable likelihood,
11 cause the death of the unborn child. Such use, prescription, or means is not an
12 abortion if undertaken with the intent to do any of the following:

13 (a) Save the life or preserve the health of the unborn child.

14 (b) Remove an unborn child who died of natural causes.

15 (c) Remove an ectopic pregnancy.

16 (5) "Miscarriage or stillbirth" means the spontaneous or accidental
17 death of an unborn child, whether the death occurred in the womb or in the
18 process of birth. Death of the unborn child is indicated by the lack of signs of
19 breathing or any other evidence of life, such as beating of the heart, pulsation
20 of the umbilical cord, or definite movement of voluntary muscles.

21 C.(1) Nothing in this Section shall be construed to prohibit any
22 transaction related to the final disposition of the bodily remains of the aborted
23 human being in accordance with state law, or to prohibit any conduct permitted
24 under state law that is undertaken with any of the following purposes:

25 (a) The purpose of providing knowledge solely to the mother, such as for
26 pathological or diagnostic purposes.

27 (b) The purpose of providing knowledge solely to law enforcement
28 officers, such as the case of an autopsy following a feticide.

29 (2) Nothing in this Section shall be construed to prohibit the donation of
30 bodily remains from a human embryo or fetus whose death was caused by a

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1 natural miscarriage or stillbirth, in accordance with the guidelines and
2 prohibitions provided in applicable state and federal law.

3 (3) Nothing in this Section shall be construed to affect existing federal or
4 state law regarding the practice of abortion, or to create or recognize a right to
5 abortion.

6 D. Any person who violates this Section shall be sentenced to a term of
7 imprisonment at hard labor for not less than ten nor more than fifty years, at
8 least ten years of which shall be served without benefit of probation or
9 suspension of sentence, and may, in addition, be required to pay a fine of not
10 more than fifty thousand dollars.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit E

ENROLLED

ACT No. 97

2016 Regular Session

HOUSE BILL NO. 386

BY REPRESENTATIVES HOFFMANN, ABRAHAM, AMEDEE, BACALA, BAGLEY, BAGNERIS, BARRAS, BROADWATER, CHAD BROWN, CARMODY, COX, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GUINN, LANCE HARRIS, HENSGENS, HILFERTY, HILL, HODGES, HORTON, HUVAL, IVEY, JACKSON, MIKE JOHNSON, ROBERT JOHNSON, NANCY LANDRY, LEBAS, MAGEE, DUSTIN MILLER, AND POPE AND SENATORS BARROW, BOUDREAUX, ERDEY, JOHNS, AND MILLS

1 AN ACT

2 To amend and reenact R.S. 40:1061.10(D)(2), 1061.16(B), 1061.17(B)(3), (4)(b), (5), (6),
3 and (8), and 1061.18(D), relative to regulation of abortion; to revise the time period
4 prescribed for certain activities that are required to occur prior to an abortion; to
5 provide for the time required to elapse between performance of an obstetric
6 ultrasound and performance of an abortion; to provide for the time required to elapse
7 between delivery of certain information to a woman seeking an abortion and
8 performance of the abortion; to provide relative to conditions for consent to an
9 abortion to be deemed voluntary and informed; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1061.10(D)(2), 1061.16(B), 1061.17(B)(3), (4)(b), (5), (6), and
12 (8), and 1061.18(D) are hereby amended and reenacted to read as follows:

13 §1061.10. Abortion by physician; determination of viability; ultrasound test
14 required; exceptions; penalties

15 * * *

16 D. Ultrasound Requirements. Except in the case of a medical emergency,
17 and in addition to the provisions of R.S. 40:1061.17, consent to an abortion of an
18 unborn child at any stage of gestational development is voluntary and informed only

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1 if an obstetric ultrasound is performed in accordance with the provisions of this
2 Section.

3 * * *

4 (2)(a) Requirements. ~~At least twenty-four~~ Except as provided in
5 Subparagraph (b) of this Paragraph, at least seventy-two hours prior to the ~~woman~~
6 woman's having any part of an abortion performed or induced, and prior to the
7 administration of any anesthesia or medication in preparation for the abortion on the
8 woman, the physician who is to perform the abortion or a qualified person who is the
9 physician's agent shall comply with all of the following requirements:

10 (a) (i) Perform an obstetric ultrasound on the pregnant woman;
11 simultaneously display the screen which depicts the active ultrasound images so that
12 the pregnant woman may view them; and make audible the fetal heartbeat, if present,
13 in a quality consistent with current medical practice. Nothing in this Section shall
14 be construed to prevent the pregnant woman from not listening to the sounds
15 detected by the fetal heart monitor, or from not viewing the images displayed on the
16 ultrasound screen.

17 (b) (ii) Provide a simultaneous and objectively accurate oral explanation of
18 what the ultrasound is depicting, in a manner understandable to a layperson, which
19 shall include the presence and location of the unborn child within the uterus and the
20 number of unborn children depicted, the dimensions of the unborn child, and the
21 presence of cardiac activity if present and viewable, along with the opportunity for
22 the pregnant woman to ask questions.

23 (c) (iii) Offer the pregnant woman the option of requesting an ultrasound
24 photograph or print of her unborn child of a quality consistent with current standard
25 medical practice that accurately portrays, to the extent feasible, the body of the
26 unborn child including limbs, if present and viewable.

27 (d) (iv) Prior to the ultrasound, obtain from the pregnant woman a copy of
28 a completed, signed, and dated election form. The election form shall be produced
29 and made available by the department, and shall state as follows:

30 "Ultrasound Before Abortion Notice and Election Form

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1 Louisiana law requires an ultrasound examination prior to the performance
2 of an abortion. By signing below, I certify that I understand the following:

3 (1) I have the option to look at or look away from the ultrasound display
4 at any time.

5 (2) I have the option to listen to the heartbeat of the unborn child that is
6 required to be made audible unless I decline by initialing here: _____.

7 (3) I am required by law to hear an oral explanation of the ultrasound
8 images, unless I certify below that I am pregnant due to an act of rape or crime
9 against nature as defined by R.S. 14:89(A)(2).

10 (4) I have the option to ask and receive answers to any questions about
11 the images of the unborn child.

12 (5) I have the option to ask for an ultrasound photographic print depicting
13 the unborn child.

14 _____

15 Signature Date

16 OPTION FOR WOMEN WHO HAVE FILED LAW ENFORCEMENT REPORTS:

17 I certify that I have reported an act of rape or crime against nature as defined
18 by R.S. 14:89(A)(2) to law enforcement officials, and that I decline to hear an oral
19 explanation of the ultrasound images.

20 _____

21 Signature Date"

22 ~~(e)~~ (v) Orally read the following statement to the pregnant woman in the
23 ultrasound examination room prior to beginning the ultrasound examination, and
24 certify by signature on a form that shall be produced and made available by the
25 department that the following statement was delivered orally:

26 "During this ultrasound examination, you have the right to an oral
27 explanation of the results. You have the option to view the images on the ultrasound
28 screen. The heartbeat of the unborn child, if present, will be made audible, unless
29 you declined on the election form. You have the right to receive answers to any

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1 questions you ask about your ultrasound examination. You have the right to receive
2 an ultrasound photographic print, which will be provided at your request."

3 ~~(f)~~ (vi) Retain copies of the election form and certification prescribed by
4 ~~Subparagraphs (d) and (e) of this Paragraph~~ Items (iv) and (v) of this Subparagraph.

5 The certification shall be placed in the medical file of the woman and shall be kept
6 by the abortion provider for a period of not less than seven years. If the woman is a
7 minor, the certification shall be placed in the medical file of the minor and kept for
8 at least seven years or for five years after the minor reaches the age of majority,
9 whichever is greater. The woman's medical files shall be kept confidential as
10 provided by law.

11 (b) If the pregnant woman certifies in writing that she currently lives one
12 hundred fifty miles or more from the nearest licensed outpatient abortion facility to
13 her residence, then the physician who is to perform the abortion or a qualified person
14 who is the physician's agent shall comply with all of the requirements of
15 Subparagraph (a) of this Paragraph at least twenty-four hours prior to the woman
16 having any part of an abortion performed or induced.

17 * * *

18 §1061.16. Information on psychological impacts, illegal coercion, abuse, and human
19 trafficking required prior to abortion; task force on information resources

20 * * *

21 B.(1) At least twenty-four ~~Except as provided in Paragraph (2) of this~~
22 Subsection, at least seventy-two hours prior to undergoing an elective abortion as
23 defined in R.S. 40:1061.9, and as a condition for consent to the abortion to be
24 deemed voluntary and informed, the woman or minor female considering abortion
25 shall be given a copy of the printed materials described in this Section by the
26 physician who is to perform the abortion or a qualified person as defined in R.S.
27 40:1061.17(B)(4)(c), except in the case of medical emergency as provided in R.S.
28 40:1061.23.

29 (2) If the woman or minor female considering abortion certifies in writing
30 that she currently lives one hundred fifty miles or more from the nearest licensed

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1 outpatient abortion facility to her residence, then she shall be given a copy of the
 2 printed materials described in this Section at least twenty-four hours prior to an
 3 elective abortion procedure by the physician who is to perform the abortion or a
 4 qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of
 5 medical emergency as provided in R.S. 40:1061.23.

* * *

7 §1061.17. Woman's Right To Know

* * *

9 B. Informed consent; requirements. After a woman is determined to be
 10 pregnant, no abortion shall be performed or induced without the voluntary and
 11 informed consent of the woman upon whom the abortion is to be performed or
 12 induced. Except in the case of a medical emergency, consent to an abortion is
 13 voluntary and informed if and only if:

* * *

15 (3)(a) Oral information from the physician. ~~At least twenty-four~~ Except as
 16 provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the
 17 abortion, the physician who is to perform the abortion or the referring physician has
 18 informed the woman, orally and in person, of:

19 (a) (i) The name of the physician who meets the requirements of R.S.
 20 46:1061.10(A) and who will perform the abortion.

21 (b) (ii) A description of the proposed abortion method and of those risks
 22 (including risks to the woman's reproductive health) and alternatives to the abortion
 23 that a reasonable patient would consider material to the decision of whether or not
 24 to undergo the abortion.

25 (c) (iii) The probable gestational age of the unborn child at the time the
 26 abortion is to be performed; and, if the unborn child is viable or has reached the
 27 gestational age of twenty-four weeks and the abortion may be otherwise lawfully
 28 performed under existing law, that:

29 (d) (aa) The unborn child may be able to survive outside the womb.

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1 ~~(ii)~~ (bb) The woman has the right to request the physician to use the method
2 of abortion that is most likely to preserve the life of the unborn child.

3 ~~(iii)~~ (cc) If the unborn child is born alive, that attending physicians have the
4 legal obligation to take all reasonable steps necessary to maintain the life and health
5 of the child.

6 ~~(d)~~ (iv) The probable anatomical and physiological characteristics of the
7 unborn child at the time the abortion is to be performed.

8 ~~(e)~~ (v) The medical risks associated with carrying her child to term.

9 ~~(f)~~ (vi) Any need for anti-Rh immune globulin therapy, if she is Rh negative,
10 the likely consequences of refusing such therapy, and a good faith estimate of the
11 cost of the therapy.

12 ~~(g)~~ (vii) The availability of anesthesia or analgesics to alleviate or eliminate
13 organic pain to the unborn child that could be caused by the method of abortion to
14 be employed.

15 ~~(h)~~ (viii) The requirement that at least ~~twenty-four~~ seventy-two hours prior
16 to the ~~woman~~ woman's having any part of an abortion performed or induced, the
17 physician, referring physician, or qualified person working in conjunction with either
18 physician must perform an obstetric ultrasound under the provisions of R.S.
19 40:1061.10.

20 ~~(i)~~ (ix) The inclusion in her printed materials of a comprehensive list,
21 compiled by the department, of facilities that offer obstetric ultrasounds free of
22 charge.

23 (b) If the woman certifies in writing that she currently lives one hundred fifty
24 miles or more from the nearest licensed outpatient abortion facility to her residence,
25 then the physician who is to perform the abortion or the referring physician shall
26 comply with all of the requirements of Subparagraph (a) of this Paragraph at least
27 twenty-four hours prior to the abortion.

28 (4) Oral information from a physician or qualified person.

29 * * *

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1 (b)(i) ~~At least twenty-four~~ Except as provided in Item (ii) of this
 2 Subparagraph, at least seventy-two hours before a scheduled abortion, the physician
 3 who is to perform the abortion, the referring physician, or a qualified person has
 4 informed the woman, orally and in person, that:

5 (i) (aa) Medical assistance benefits may be available for prenatal care,
 6 childbirth, and neonatal care, and that more detailed information on the availability
 7 of such assistance is contained on the department's website and in the printed
 8 materials which shall be given to her as provided in this Section.

9 (ii) (bb) The department's website and printed materials describe the unborn
 10 child and list agencies which offer alternatives to abortion.

11 (iii) (cc) The father of the unborn child is liable to assist in the support of her
 12 child, even in instances where he has offered to pay for the abortion. In the case of
 13 rape, this information may be omitted.

14 (iv) (dd) She is free to withhold or withdraw her consent to the abortion at
 15 any time before or during the abortion without affecting her right to future care or
 16 treatment and without the loss of any state or federally funded benefits to which she
 17 might otherwise be entitled.

18 (ii) If the woman certifies in writing that she currently lives one hundred
 19 fifty miles or more from the nearest licensed outpatient abortion facility to her
 20 residence, then the physician who is to perform the abortion, the referring physician,
 21 or a qualified person shall comply with all of the requirements of Item (i) of this
 22 Subparagraph at least twenty-four hours before a scheduled abortion.

23 * * *

24 (5)(a) Provision of printed materials. ~~At least twenty-four~~ Except as
 25 provided in Subparagraph (b) of this Paragraph, at least seventy-two hours before the
 26 abortion, the woman is given a copy of the printed materials described in this Section
 27 by the physician who is to perform the abortion, the referring physician, or a
 28 qualified person as defined in Subparagraph (4)(c) of this Subsection. If the woman
 29 is unable to read the materials, they shall be read to her. If the woman asks questions

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1 concerning any of the information or materials, answers shall be provided to her in
2 her own language.

3 (b) If the woman certifies in writing that she currently lives one hundred fifty
4 miles or more from the nearest licensed outpatient abortion facility to her residence,
5 then the woman shall be given a copy of the printed materials described in this
6 Section by the physician who is to perform the abortion, the referring physician, or
7 a qualified person as defined in Subparagraph (4)(c) of this Subsection at least
8 twenty-four hours before the abortion. If the woman is unable to read the materials,
9 they shall be read to her. If the woman asks questions concerning any of the
10 information or materials, answers shall be provided to her in her own language.

11 (6) Certification and reporting. The woman certifies in writing on a form
12 provided by the department, prior to the abortion, that the information and materials
13 required to be provided under this Section have been provided at least ~~twenty-four~~
14 seventy-two hours prior to the abortion; or, if applicable, at least twenty-four hours
15 prior to the abortion in the case of a woman who has given prior certification in
16 writing that she currently lives one hundred fifty miles or more from the nearest
17 licensed outpatient abortion facility to her residence. All physicians who perform
18 abortions shall report the total number of certifications received monthly to the
19 department. The department shall make the number of certifications received
20 available to the public on an annual basis.

21 * * *

22 (8) The woman is not required to pay any amount for the abortion procedures
23 until the ~~twenty-four-hour~~ seventy-two-hour period has expired; or until expiration
24 of the twenty-four-hour period applicable in the case of a woman who has given
25 prior certification in writing that she currently lives one hundred fifty miles or more
26 from the nearest licensed outpatient abortion facility to her residence.

27 * * *

28 §1061.18. Abortion sought due to rape or certain acts of crime against nature;
29 reporting and certification

30 * * *

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1 D. Whenever an abortion is being sought pursuant to R.S. 40:1061.6 to
2 terminate a pregnancy resulting from an alleged act of rape or crime against nature
3 as defined by R.S. 14:89(A)(2), the victim may request spiritual counseling and shall
4 be offered the same informed consent information, without the seventy-two-hour or
5 twenty-four-hour delay, ~~contained in~~ whichever may be applicable pursuant to R.S.
6 40:1061.17(B), prior to the performance of the abortion.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit F

ENROLLED

ACT No. 98

2016 Regular Session

HOUSE BILL NO. 488

BY REPRESENTATIVES JACKSON, ADAMS, AMEDEE, BACALA, BAGLEY, BAGNERIS, BARRAS, BISHOP, CHAD BROWN, TERRY BROWN, CARMODY, STEVE CARTER, CHANEY, COUSSAN, COX, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GUINN, LANCE HARRIS, HAZEL, HENSGENS, HILFERTY, HILL, HODGES, HOFFMANN, HOLLIS, HORTON, HOWARD, HUVAL, IVEY, MIKE JOHNSON, LEBAS, LYONS, MACK, MAGEE, MIGUEZ, DUSTIN MILLER, JAY MORRIS, PIERRE, POPE, PYLANT, REYNOLDS, SEABAUGH, STOKES, TALBOT, THIBAUT, AND ZERINGUE AND SENATORS ALARIO, APPEL, BARROW, BOUDREAUX, COLOMB, CORTEZ, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG, MARTINY, MILKOVICH, MILLS, MIZELL, PEACOCK, PERRY, RISER, TARVER, THOMPSON, WALSWORTH, AND WARD

1 AN ACT

2 To amend and reenact R.S. 40:1061.10(A)(1), relative to regulation of abortion; to provide
3 for qualifications of physicians who perform elective abortions; and to provide for
4 related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1061.10(A)(1) is hereby amended and reenacted to read as
7 follows:

8 §1061.10. Abortion by physician; determination of viability; ultrasound test
9 required; exceptions; penalties

10 A.(1) Physician requirements. No person shall perform or induce an
11 abortion unless that person is a physician licensed to practice medicine in the state
12 of Louisiana and is currently ~~enrolled in or has completed a residency~~ board-certified
13 in obstetrics and gynecology or family medicine or enrolled in a residency program
14 for obstetrics and gynecology or family medicine, when that resident performs or
15 induces an abortion under the direct supervision of a physician who is board-certified
16 in obstetrics and gynecology or family medicine. Any outpatient abortion facility
17 that knowingly or negligently employs, contracts with, or provides any valuable
18 consideration for the performance of an abortion in an outpatient abortion facility by

Exhibit G

ENROLLED

2016 Regular Session

ACT No. 304

HOUSE BILL NO. 606

BY REPRESENTATIVES HOFFMANN, ABRAHAM, AMEDEE, ARMES, BAGLEY, BARRAS, BERTHELOT, BISHOP, CARMODY, STEVE CARTER, CHANEY, COUSSAN, COX, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GISCLAIR, LANCE HARRIS, HENSGENS, HILFERTY, HILL, HODGES, HOLLIS, HORTON, HOWARD, HUVAL, IVEY, JACKSON, MIKE JOHNSON, NANCY LANDRY, LEBAS, LEOPOLD, MACK, MCFARLAND, MIGUEZ, JAY MORRIS, JIM MORRIS, PEARSON, POPE, PUGH, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SCHRODER, SIMON, THIBAUT, WILLMOTT, AND ZERINGUE AND SENATOR WALSWORTH

1 AN ACT

2 To amend and reenact R.S. 40:1061.6(A) and to enact Chapter 1-A of Title 36 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 36:21, relative to
4 authorized uses of public funds; to prohibit certain uses of public funds by
5 institutions, boards, commissions, departments, agencies, officials, and employees
6 of the state or its political subdivisions; to prohibit entities that perform abortions
7 from receiving public funding for any purpose; to provide for construction of the
8 prohibition; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 36:21, is hereby enacted to read as follows:

12 CHAPTER 1-A. ELIGIBILITY OF ABORTION PROVIDERS

13 FOR PUBLIC FUNDING

14 §21. Public funding for abortion providers; prohibition

15 A. For purposes of this Chapter, the term "abortion" shall have the meaning
16 ascribed in R.S. 40:1061.9.

17 B.(1) No institution, board, commission, department, agency, official, or
18 employee of the state, or of any local political subdivision thereof, shall contract
19 with, award any grant to, or otherwise bestow any funding upon, an entity or
20 organization that performs abortions, or that contracts with an entity or organization

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1 that performs abortions, in this state. The prohibition provided in this Section shall
 2 apply to state funds, federal funds, and any other funds that may be used for purposes
 3 of contracting for services, providing reimbursements, or grant issuance.

4 (2) The prohibition provided in this Section shall not be construed to restrict
 5 funding to an entity that may perform the following types of abortions, exclusively:

6 (a) An abortion which is medically necessary to prevent the death of the
 7 mother.

8 (b) An abortion in a case when the mother is a victim of rape or incest.

9 (c) An abortion performed when the pregnancy is diagnosed as medically
 10 futile. For purposes of this Subparagraph, "medically futile" means that, in
 11 reasonable medical judgment, the unborn child has a profound and irremediable
 12 congenital or chromosomal anomaly that is incompatible with sustaining life after
 13 birth. This diagnosis shall be a medical judgment certified in the pregnant woman's
 14 medical record by a reasonably prudent physician who is knowledgeable about the
 15 case and the treatment possibilities with respect to the medical conditions involved.

16 Section 2. R.S. 40:1061.6(A) is hereby amended and reenacted to read as follows:

17 §1061.6. Use of public funds

18 A.(1) Notwithstanding any other provision of law to the contrary, no public
 19 funds, made available to any institution, board, commission, department, agency,
 20 official, or employee of the state of Louisiana, or of any local political subdivision
 21 thereof, whether such funds are made available by the government of the United
 22 States, the state of Louisiana, or of a local governmental subdivision, or from any
 23 other public source shall be used in any way for, to assist in, or to provide facilities
 24 for an abortion, except when the abortion is medically necessary to prevent the death
 25 of the mother.

26 (2) No institution, board, commission, department, agency, official, or
 27 employee of the state, or of any local political subdivision thereof, shall contract
 28 with, award any grant to, or otherwise bestow any funding upon, an entity or
 29 organization that performs abortions, or that contracts with an entity or organization

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1 that performs abortions, in this state, as more specifically provided in Chapter 1-A
2 of Title 36 of the Louisiana Revised Statutes of 1950.

3 Section 3. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Exhibit H

DECLARATION OF EMERGENCY**Department of Health
Bureau of Health Services Financing****Abortion Facilities—Licensing Standards
(LAC 48:I.4431)**

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.4431 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed and replaced the provisions governing the licensing standards for abortion facilities in order to incorporate the changes imposed by legislation, and further revise and clarify those provisions (*Louisiana Register*, Volume 41, Number 4).

Act 97 of the 2016 Regular Session of the Louisiana Legislature increased the time period required for certain pre-operative services. Act 563 of the 2016 Regular Session of the Louisiana Legislature provides that at least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of certain printed information, including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality, and given printed information about resources, programs and services for infants and children born with disabilities, as well as other related matters. Act 593 of the 2016 Regular Session of the Louisiana Legislature provides for the disposal, by interment or cremation, of fetal remains and designates procedures for giving patients options for arrangements. This Emergency Rule is being promulgated to amend the provisions governing outpatient abortion clinics in order to comply with the provisions of Acts 97, 563 and 593.

This action is being taken to protect the health and welfare of Louisiana citizens by assuring the health and safety of women seeking health care services at licensed abortion facilities. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2016-2017.

Effective December 3, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing the licensing standards for abortion facilities.

Title 48**PUBLIC HEALTH GENERAL****Part I. General Administration****Subpart 3. Licensing and Certification****Chapter 44. Abortion Facilities****Subchapter C. Pre-Operative, Intra-operative, and Post-Operative Procedures****§4431. Screening and Pre-Operative Services****A. - E.1. ...****2. Requirements**

a. Except as provided in Subparagraph (b) below, at least 72 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the

physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

i. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

ii. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

iii. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

iv. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form; and

v. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least ten years from the time the minor reaches the age of majority. The woman's medical files shall be kept confidential as provided by law.

b. If the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the requirements of §4431.E.2.a at least 24 hours prior to the woman having any part of an abortion performed or induced.

c. - e. Repealed.

E.3. - G1. ...

a. Except as provided in Paragraph b below, at least 72 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion, pursuant to all laws, rules and regulations regarding informed consent. The informed consent shall be communicated both orally and in-person, and in writing, and shall be provided in a private room. Documentation of all such informed consent provided shall be maintained in the patient's medical record.

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed

outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or the referring physician shall comply with all of the requirements of §4431.G.1 at least 24 hours prior to the abortion.

1.c. - 3. ...

a. Except as provided in Subparagraph b below, at least 72 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. - iv. ...

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion the referring physician, or a qualified person shall comply with all of the requirements of §4431.G.3 at least 24 hours prior to the abortion.

4. ...

a. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person. These printed materials shall include any printed materials necessary for a voluntary and informed consent, pursuant to R.S. 40:1061.17. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of the printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

i. - NOTE. Repealed.

b. At least 72 hours before the abortion, the pregnant woman or minor female considering an abortion shall be given a copy of the department's *Point of Rescue* pamphlet and any other materials described in R.S. 40:1061.16 by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws. However, if the pregnant woman or minor female considering an abortion certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 72 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws.

i. The physician or qualified person shall provide to the woman, or minor female seeking an abortion, such printed materials individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

ii. The physician or qualified person shall obtain the signature of the woman or minor female seeking an

abortion on a form certifying that the printed materials were given to the woman or minor female.

iii. In the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment, the physician or qualified person shall provide to the parent copies of the same materials given to the female.

iv. The signed certification form shall be kept within the medical record of the woman or minor female for a period of at least seven years.

c. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of a printed informational document including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs and services for infants and children born with disabilities. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

d. If the pregnant woman seeking an abortion is unable to read the materials, the materials shall be read to her. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

5. ...

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 72 hours prior to the abortion, or at least 24 hours prior to the abortion in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy. This form shall be maintained in the woman's medical record.

b. ...

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 72-hour period has expired, or until expiration of the 24-hour period applicable in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy.

6. - 7.b. ...

8. Disposition of Fetal Remains

a. Each physician who performs or induces an abortion which does not result in a live birth shall ensure that the remains of the fetus are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq. and the provisions of LAC 51:XXVI.102 of the Sanitary Code.

b. Prior to an abortion, the physician shall orally and in writing inform the pregnant woman seeking an abortion in the licensed abortion facility that the pregnant woman has the following options:

i. the option to make arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.; or

ii. the option to have the outpatient abortion facility/physician make the arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

c. The pregnant woman shall sign a consent form attesting that she has been informed of these options, and shall indicate on the form whether she wants to make arrangements for the disposition of fetal remains or whether she wants the facility to make arrangements for the disposition and/or disposal of fetal remains.

d. the requirements of §4431.G.8 regarding dispositions of fetal remains, shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:700 (April 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

Exhibit I

DECLARATION OF EMERGENCY

**Department of Health
Office of Public Health**

**Burial or Cremation of Aborted Human Remains
(LAC 51:XXVI.102)**

The state health officer, acting through the Louisiana Department of Health, Office of Public Health (“LDH-OPH”), pursuant to the rulemaking authority granted by R.S. 40:4(A)(3), R.S. 40:4(A)(13) and R.S. 40:5(A)(14), hereby adopts the following Emergency Rule to require burial or cremation of remains resulting from an abortion as provided for under Act No. 593 of the 2016 Regular Session of the Louisiana Legislature. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and shall remain in effect for the maximum period allowed under the law or until adoption of a final Rule, whichever occurs first. This Emergency Rule is effective on the 3rd day of December 2016.

Title 51

PUBLIC HEALTH—SANITARY CODE

**Part XXVI. Burial, Transportation, Disinterment, or
Other Disposition of Dead Human Bodies**

Chapter 1. General Requirements

**§102. Burial or Cremation of Aborted Human
Remains**

A. Each physician who performs or induces an abortion which does not result in a live birth shall insure that the remains of the child are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

B. The requirements of Subsection A of this Section shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

C. An abortion patient may by written consent authorize the physician performing the abortion to dispose of the human remains by burial or cremation, in accordance with the provisions of Part XXVII, Chapter 11, Section 1101.A.7 of this Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(3), R.S. 40:4(A)(13), and R.S. 40:5(A)(14).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 42:

Rebekah E. Gee, MD, MPH
Secretary
and
Jimmy Guidry, MD
State Health Officer