SUPREME COURT OF LOUISIANA

NO. _____

JUNE MEDICAL SERVICES, LLC D/B/A HOPE MEDICAL GROUP FOR WOMEN, KATHALEEN PITTMAN, MEDICAL STUDENTS FOR CHOICE, ON BEHALF OF ITSELF AND ITS MEMBERS, AND CLARISSA HOFF, M.D.

PLAINTIFFS-APPLICANTS

VERSUS

JEFF LANDRY, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF LOUISIANA, AND COURTNEY N. PHILLIPS, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH

DEFENDANTS-RESPONDENTS

ON APPLICATION FOR SUPERVISORY WRIT
FROM THE COURT OF APPEAL, FIRST CIRCUIT, CIVIL NO. 2022 CW 0806

APPLICATION FOR SUPERVISORY WRIT
AND REQUEST FOR EXPEDITED CONSIDERATION

CIVIL PROCEEDING

Ellie T. Schilling, 33358
SCHONEKAS, EVANS, McGOEY
& McEACHIN, LLC
909 Poydras Street, Suite 1600
New Orleans, LA 70112
Phone: (504) 680-6050
Fax: (504) 680-6051
E-mail: Ellie@semmlaw.com

Joanna Wright*
Sabina Mariella*
Brianna Hills*
Lindsey Ruff*
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards
New York, New York 10001
Phone: 212-446-2359
Email: jwright@bsfllp.com

Jenny Ma*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Phone: (917) 637-3600
Fax: (917) 637-3666
Email: jma@reprorights.org

Attorneys for June Medical Services, LLC; Kathaleen Pittman; Medical Students for Choice; and Clarissa Hoff, M.D.

* Motions for Admission *Pro Hac Vice* Forthcoming

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutions

INTRODUCTION

This Writ Application does not just impact women's access to healthcare in Louisiana, including crucial, sometimes lifesaving, healthcare unrelated to abortion care. The disposition of this Writ Application will determine whether district courts retain the discretion to preliminarily enjoin enforcement of criminal laws after finding a likelihood that those very criminal laws violate Louisiana citizens' due process rights. If the judgment of the First Circuit Court of Appeal stands, it will eliminate district courts' power to preliminarily enjoin criminal statutes that likely violate the guarantees in the Due Process Clause and Rights of the Accused in the Louisiana Constitution. La. Const. art I, §§ 2, 13.

In ruling that district courts lack the discretion to stay suspensive appeals, the First Circuit excerpted La. R.S. 13:4431 without any analysis of that statute (and it did so without providing Plaintiffs an opportunity to be heard despite their respectful request to be heard in a timely fashion). Yet Article 3612 of the Code of Civil Procedure explicitly grants district courts discretion to deny suspensive appeals. This Honorable Court has never decided whether La. R.S. 13:4431 can be applied to override the appeals process set forth in Article 3612 of the Code of Civil Procedure when the enforcement of a *criminal* statute (which in this case includes criminal penalties of up to 15 years in prison and a mandatory minimum prison sentence, *see* La. R.S. 14:87.7 (C)) threatens an ordinary citizen's due process rights. Because this Writ Application raises an issue of paramount importance that has never been decided by this Court, and was decided for the first time in the First Circuit's judgment, and for the additional reasons included below, Plaintiffs respectfully request that the Writ Application be granted.

Plaintiffs respectfully request expedited review of this Writ Application. The District Court's order, directed by the First Circuit's judgment, suspended a preliminary injunction enjoining the enforcement of Louisiana's criminal abortion bans (La. R.S. 14:87.7, 14:87.8, 40:1061, collectively the "Trigger Bans"). The District Court issued that preliminary injunction after determining that Plaintiffs were likely to succeed on their claims that the Trigger Bans are unconstitutionally vague and, as a result, the Trigger Bans "could unconstitutionally be reasonably misunderstood and misapplied by healthcare professionals, and by interpretation of ordinary citizens." App'x A at 3. Each day that the Trigger Bans are in effect causes irreparable injury. Currently, Plaintiffs and other medical providers throughout Louisiana do not understand what

care they can or cannot provide, including care that is necessary to save the life of the mother. Because providers do not know what medical care they may or may not perform, they are forced, in tragic instances, to choose between engaging in potentially illegal conduct or refusing to provide critical healthcare to their patients with potentially grave results.

For example, the former Secretary of the Louisiana Department of Health ("LDH") and OB/GYN, Dr. Rebekah Gee, submitted an affidavit in support of Plaintiffs' motion for a preliminary injunction, testifying to the public health crisis enforcement of the Trigger Bans will cause in Louisiana: "Fear of punishment aligned with lack of clarity on how this law will be enforced can lead to devastating consequences for Louisiana women as well as moral distress for the clinicians who care for them and have taken the Hippocratic oath to do no harm." Ex. R, Aff. of Former LDH Secretary ¶ 8.[1]

This chilling effect extends beyond treatment for pregnancy-related conditions. As but one example, the Director of the Health Department for the City of New Orleans testified that oncologists "do not know whether, or when, they would be able to treat pregnant patients with chemotherapy when it would result in terminating the pregnancy, or whether they should, instead, withhold potentially life-saving chemotherapy treatments when treating pregnant patients for fear they could be criminally charged." Ex. E, Aff. of New Orleans Health Department Director, ¶ 16. Expedited review is critical to prevent such consequences, and Plaintiffs respectfully request that this Court exercise its supervisory jurisdiction to reverse the First Circuit's judgment and reinstate the District Court order denying the suspensive appeal.

CONSIDERATIONS FOR GRANTING WRIT

"The grant or denial of an application for writs rests within the sound judicial discretion of this court." La. Sup. Ct. R. X, § 1(a). Here, subsections 1(a)(2)-(5) of Supreme Court Rule X all separately and independently justify granting this Writ Application. This Court should, therefore, grant supervisory review.

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[1] All citations to affidavits are to affidavits that Plaintiffs filed with the 19th JDC, Docket No. C-720988, in support of their Application for Preliminary Injunction, which are available at the July 18, 2022, docket entries entitled "MTN WITHOUT ORD-CIV - PLAINTIFF SUBMISSION OF EVIDENCE" and "EXHIBIT-CV – EVIDENCE."

First, La. Sup. Ct. R. X, § 1(a)(2)'s considerations apply because the First Circuit judgment "decided" a "significant issue or law which has not been, but should be, resolved by this court." This Court has never decided whether La. R.S. 13:4431 eliminates the district court's discretion to deny the suspensive appeal of a preliminary injunction blocking the enforcement of a *criminal law* that the district court found is likely to violate individuals' due process rights.

Second, La. Sup. Ct. R. X, § 1(a)(4)'s considerations are separately and independently implicated because the First Circuit has "erroneously interpreted or applied" Article 3612 and La. R.S. 13:4431, ignoring both statutes' plain language and ruling that the district court lacked the discretion to deny the suspensive appeal. The First Circuit judgment will "cause material injustice" and "significantly affect the public interest" (La. Sup. Ct. R. X, § 1(a)(4)) because the suspensive appeal forces Plaintiffs to choose between refusing to provide critical healthcare to their patients, with sometimes grave consequences, or engaging in potentially illegal conduct and being imprisoned for up to 15 years under laws that the District Court already concluded are likely to violate their constitutional rights.

Third, La. Sup. Ct. R. X, § 1(a)(5) applies because the First Circuit issued a decision interpreting La. R.S. 13:4431 with no mention of Article 3612 of the Code of Civil Procedure and with no explanation in its one-paragraph decision of what La. R.S. 13:4431 actually means. Instead, it cites two cases interpreting La. R.S. 13:4431. Yet this Court has repeatedly made clear that case law cannot substitute for (and certainly cannot precede) analysis of the statute itself. But that is exactly what the First Circuit did here. And it did so without providing Plaintiffs an opportunity to submit an opposition, despite Plaintiffs' timely request to be heard.

Fourth, and in the alternative, if this Court were inclined to consider the cases cited by the First Circuit as controlling precedent (which, for the reasons explained below, it should not), then the Application should be granted under La. Sup. Ct. R. X, § 1(a)(3) because application of these prior rulings in the manner advocated by Defendants and adopted by the First Circuit would create an absurd state of affairs in which no individual could ever obtain preliminary relief from a criminal statute whose enforcement was likely to violate their due process rights. That, of course, cannot be the case.

REQUEST FOR EXPEDITED CONSIDERATION

Plaintiffs respectfully request expedited consideration of their Application. Each day that the Trigger Bans are enforced, irreparable harm mounts as medical providers, including emergency room physicians called on to provide lifesaving care, do not know what medical care they may provide without being criminally prosecuted for up to 15 years in prison. These concerns—testified to by over 15 doctors in the District Court record—are not hypothetical. During the pendency of the transfer of this case from Orleans to East Baton Rouge Parish, there was a 72-hour gap in relief when the first temporary restraining order ("TRO") expired and before the second TRO was granted, meaning the Trigger Bans were temporarily in effect. During this time, medical providers across Louisiana were unable to provide the standard-of-care to their patients.

For example, a physician testified to the fact that a patient presented in the emergency room 16-weeks pregnant whose water had broken. Ex. G, Aff. of OB/GYN ¶ 10. In this circumstance, the fetus is not viable while the woman is at risk for life-threatening infection and sepsis. *Id.* Because the Trigger Bans were in effect, however, this patient was denied the routine standard-of-care procedure she desired to protect the woman from developing life-threatening conditions. *Id.* Instead, she was forced to undergo a long, difficult, and painful labor of a non-viable fetus which resulted in her hemorrhaging and losing over a liter of blood before the doctor was able to stop the bleeding. The doctor testified that: "[t]his was the first time in my 15-year career that I could not give a patient the care they needed." *Id*. ¶ 11.

Absent expedited consideration and relief from this Court, this story is sure to repeat. The Director of the Health Department for the City of New Orleans testified that the different terminology that the Trigger Bans use in defining exceptions to prohibited conduct will cause delay or confusion in emergency situations, which will cause an increase in maternal mortality rates in Louisiana. Ex. E, Aff. of New Orleans Health Department Director, ¶¶ 11–14. Similarly, a New Orleans emergency room doctor testified that she and her colleagues cannot discern how dire a pregnant woman's health must be under the language of the Trigger Bans to invoke the life-of-the-mother exception to the Trigger Bans without fear of prosecution. Ex. L, Aff. of Emergency Room Doctor, ¶ 7.

Given the stakes and the potential implication for all medical care provided to women—including emergency lifesaving care, miscarriage management, and oncological treatments—Plaintiffs respectfully request that this Court grant expedited consideration.

STATEMENT OF THE CASE

On June 27, 2022, Plaintiffs filed a Verified Petition for Temporary Restraining Order and Preliminary and Permanent Injunction Enjoining the Implementation or Enforcement of Louisiana's Trigger Bans (La. R.S. 14:87.7, 14:87.8, 40:1061) in Orleans Parish Civil District Court. That same day, the Civil District Court granted Plaintiffs' request for a temporary restraining order ("TRO"), enjoining the enforcement of the Trigger Bans. *See* Verified Petition for Temporary Restraining Order and Preliminary and Permanent Injunction, *June Medical Services, LLC, et al. v. Landry, et al.*, No. 2022-05633. On July 1, 2022, Defendants applied for a supervisory writ requesting that this Court stay the District Court proceedings, including the TRO. On July 6, 2022, after affording Plaintiffs an opportunity to oppose, this Honorable Court denied Defendants' request for a supervisory writ.

On July 8, 2022, the Civil District Court granted Defendants' Venue Exception and transferred the case to East Baton Rouge. *See* July 11, 2022, Judgment, *June Medical Services, LLC, et al. v. Landry, et al.*, No. 2022-05633. On July 11, 2022, the Nineteenth Judicial District Court granted Plaintiffs' request for a TRO, again enjoining the Trigger Bans. *See* July 11, 2022, Temporary Restraining Order, *June Medical Services, LLC, et al. v. Landry, et al.*, No. C-720988. On July 21, 2022, after a lengthy preliminary injunction hearing held three days prior, in which over 800 pages of evidence were admitted into the record and voluminous briefing was filed, the District Court issued a judgment granting Plaintiffs' application for preliminary injunction, enjoining enforcement of the Trigger Bans pending trial on the merits.

In its Reasons for the Judgment, issued on July 26, 2022, the District Court ruled that the Trigger Bans had "been expressively and inconsistently interpreted by independent state-law prosecutorial officials," that the Trigger Bans "could unconstitutionally be reasonably misunderstood and misapplied by healthcare professionals, and by interpretation of ordinary citizens," and that "[c]onstitutional notice for lawful implementation and for full and immediate enforcement against crimes of abortion through the 'Trigger Bans' do not exist at this time." App'x A at 2–3. It further explained that "Constitutional ambiguity in Louisiana codifying

abortion-criminality exists at this time," and, therefore, the Due Process Clause of the Louisiana Constitution would likely be violated if the Trigger Bans were enforced. *Id*. The District Court also adopted and incorporated Plaintiffs' 17-page proposed findings of fact and conclusions of law in its reasons for judgment. *Id*. at 3 n.10; *see also* App'x B.

On July 22, 2022, Defendants petitioned the District Court for a suspensive appeal of the Judgment. *See* Defs.' July 22, 2022, Petition for Suspensive Appeal, *June Medical Services, LLC, et al. v. Landry, et al.*, No. C-720988 ("Defs.' Pet."). In the same order in which it provided its reasons for granting the preliminary injunction, the District Court issued an order denying the petition for suspensive appeal. *See* App'x A at 3. In so denying, the District Court rejected Defendants' arguments that La. R.S. 13:4431 *requires* district courts to grant suspensive appeals—which would eliminate the discretion district courts enjoy under Article 3612 of the Code of Civil Procedure to deny suspensive appeals when a law is preliminarily enjoined. *Id*. at 2; *see also* Defs.' Pet. ¶¶ 4–5. Thus, the District Court found that it maintained discretion to deny Defendants' suspensive appeal and then exercised that discretion, balancing "the statutory rights of the state and individual parties, within the constitutional framework's provision of rights" and determining that the suspensive appeal should be denied. App'x A at 2.

On the evening of July 28, 2022, Defendants filed an Application for a Supervisory Writ with the First Circuit, which was docketed early the next morning. Defs.' July 28, 2022, Supervisory Writ App., *June Medical Services, LLC, et al. v. Landry, et al.*, No. 2022 CW 0806 ("Defs.' Writ App."). That same morning, Plaintiffs filed a letter with the First Circuit respectfully requesting an opportunity to be heard before a decision issued and stating their intention to timely file an opposition. App'x C. Approximately two hours after Plaintiffs filed their letter, the First Circuit granted Defendants' Writ Application and directed the District Court to grant Defendants' motion for a suspensive appeal. App'x D (the "First Circuit Judgment").

In a one-paragraph ruling, the First Circuit Judgment cited La. R.S. 13:4431, but provided no interpretation of the statute, and summarily cited two cases, providing no reasoning or analysis. *Id*. The First Circuit Judgment did not discuss, acknowledge, or cite Article 3612 of the Code of Civil Procedure. The Judgment "ordered" the District Court to "grant relators' motion for suspensive appeal pursuant to La. R.S. 13:4431." *Id*. In response to an email from Defendants on August 1, 2022, the District Court transmitted a judgment granting Defendants a suspensive

appeal. App'x E.

ASSIGNMENTS OF ERROR

1. Whether the First Circuit committed legal error in determining that La. R.S. 13:4431 provides a mandatory, non-discretionary right to suspensively appeal a preliminary injunction under the circumstances of this case?

2. Whether the First Circuit committed legal error in overriding the District Court's discretion to deny a suspensive appeal pursuant to Article 3612 of the Louisiana Code of Civil Procedure where Plaintiffs will otherwise suffer irreparable harm, including but not limited to, the violation of their due process rights as guaranteed under the Louisiana Constitution, during the pendency of the case?

SUMMARY OF ARGUMENT

As a threshold matter, the First Circuit did not even consider the controlling statute in this case—La. Code Civ. P. art. 3612—nor did it provide any statutory interpretation of La. R.S. 13:4431. This Court has made clear that pursuant to Louisiana's civil law tradition, the statutes, themselves, reign supreme because they are primary sources of authority and must be interpreted *first,* as the case law is "secondary information." *Ardoin v. Hartford*, 360 So. 2d 1331, 1334 (La. 1978). Article 3612 controls appeals of injunctive orders and establishes, in multiple provisions, that district courts enjoy discretion to deny suspensive appeals. La. Code of Civ. P. art. 3612(B) (a preliminary injunction is appealable, but "shall not be suspended during the pendency of an appeal ***unless the court in its discretion so orders***" (emphasis added)); *id.* art. 3612(C) (an appeal of a preliminary injunction must be taken within 15 days and the "***court in its discretion may stay*** further proceedings until the appeal has been decided" (emphasis added)). The First Circuit reversed the District Court without even acknowledging this statute.

In so doing, the First Circuit excerpted portions of La. R.S. 13:4431. App'x D. But La. R.S. 13:4431 says absolutely *nothing* about what district courts may or may not do. The statute is not even directed to district courts, nor does it use mandatory language. Instead, La. R.S. 13:4431 is directed to the individuals who may petition for a suspensive appeal, conferring standing on a broader group of people than would normally have standing to petition for a suspensive appeal as intervenors. *See* La. R.S. 13:4431 (explaining that the "the defendant or defendants ***or any person***

or persons affected thereby, may suspensively appeal the order or judgment to the court of competent appellate jurisdiction" when a law is restrained (emphasis added)).

When the Louisiana Legislature intends to create a mandatory stay that a district court must implement, thereby eliminating the district court's discretion, it clearly says so. Below, Plaintiffs cite over 10 statutes requiring mandatory stays in certain circumstances. *See infra* Section I.A. In each and every one of those statutes, the language is directed to the district court (not, as here, to the individuals), and it is imperative, requiring that the "court shall" stay the case. *See, e.g.*, La. R.S. 13:3381(A)(1) ("[U]pon the filing of a motion to stay by the defendant, ***the court shall stay*** proceedings on a claim for defamation of character, libel, slander, or damage to reputation" under certain circumstances (emphasis added)).

Here, where the District Court was faced with two statutes—one of which explicitly grants discretion to deny a suspensive appeal and the other which says nothing about the district court's powers—it was not error to interpret the two statutes using first principles under Louisiana civil law. This Honorable Court has said as much:

> Louisiana was born into and stringently holds onto its legal tradition, unique among its sister states, that of the civil law tradition. Whereas common law may look to jurisprudence as its primary source of law, civil law looks to the statutes and codes provided by the people, through their duly elected representatives, as its primary source of law. ***For us to so blindly adhere to this Court's previous, incorrect interpretation of the plain language and intent of Act 312, would certainly disregard our civil law tradition by elevating our own jurisprudence to equal footing with the laws enacted by our Legislature. Instead, we find that adhering to our civil tradition requires we first look to our primary source of law for the matters now before us, Act 312 itself.***

State v. La. Land & Expl. Co., 2020-00685, p. 10 (La. 6/30/21), *reh'g granted*, 2020-00685 (La. 10/19/21); 326 So. 3d 257, *and aff'd on reh'g*, 2020-00685 (La. 6/1/22); 339 So. 3d 1163 (emphasis added) (citation omitted). Indeed, in *Louisiana Land*, this Court overruled its prior precedent misinterpreting a statute relying, instead, on the plain language of the statute as required by civil law doctrines. *Id.* at 13.

Moreover, even if reliance on case law was primary (and it is not, as this Court has made clear it is "secondary"), the case law does not say what Defendants argued, and what the First Circuit seems to have adopted. The case law is explicit that La. R.S. 13:4431 does *not* eliminate judicial discretion to deny suspensive appeals. For example, in *Guillot v. Nunez*, this Court rejected relator's argument that he was "entitled to a suspensive appeal as a matter of right" and

denied the writ application, ruling that the district court was correct in denying the application for a suspensive appeal of the district court's ruling restraining enforcement of a statute. 225 La. 1035, 1038–39 (La. 1953); 74 So. 2d 205, 206. This case, alone, disposes of Defendants' argument to the First Circuit that courts have "no discretion to deny a suspensive appeal from a preliminary injunction that enjoins enforcement of a state law." Defs.' Writ App. at 10.

The First Circuit's Judgment would eliminate all plaintiffs' ability to obtain preliminary relief from *criminal* statutes that a court has ruled are likely to violate the Louisiana Constitution's guarantees of due process, basically reading preliminary injunctions out of existence. That is a far-reaching and absurd consequence to read into a statute that nowhere says any such thing.

STANDARD OF REVIEW

The District Court enjoys discretion to deny suspensive appeals and, for that reason, this Honorable Court should apply an abuse of discretion standard. *Bd. of Sup'rs of La. State Univ. v. Lewark*, 281 So. 2d 706, 709 (La. 1973) (identifying abuse of discretion as the appropriate standard when reviewing trial court's denial of a suspensive appeal). Defendants incorrectly argued to the Court of Appeals that the standard of review was de novo. Defs.' Writ App. at 8. While that is incorrect (and if the First Circuit tacitly applied that standard, it was error), the arguments below merit reversal of the First Circuit's Judgment under de novo review, as well.

ARGUMENT

I. LA. R.S. 13:4431 DOES NOT LIMIT THE DISTRICT COURT'S DISCRETION TO DENY SUSPENSIVE APPEALS.

A. The Plain Text of La. R.S. 13:4431 Confers Broader Standing to Individuals Who Can Appeal a Ruling Restraining a Law But Does Not Impact the District Court's Discretion.

Article 3612 of the Code of Civil Procedure, entitled "Appeals," governs the appeals process for preliminary injunctions. Subsections (B) and (C) specifically grant the district court discretion to deny a suspensive appeal:

> A. There shall be no appeal from an order relating to a temporary restraining order.
>
> B. An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction, but such an order or judgment shall not be suspended during the pendency of an appeal **unless the court in its discretion so orders**.
>
> C. An appeal from an order or judgment relating to a preliminary injunction must be taken, and any bond required must be furnished,

> within fifteen days from the date of the order or judgment. **The court in its discretion may stay further proceedings until the appeal has been decided**.
>
> D. Except as provided in this Article, the procedure for an appeal from an order or judgment relating to a preliminary or final injunction shall be as provided in Book III.

La. Code of Civ. P. art. 3612 (emphases added). La. R.S. 13:4431 does not modify or eliminate the district courts' discretion to deny suspensive appeals. Nor does it anywhere use mandatory language or even address the powers of the district court. Put simply, Article 3612(B) "requires denial of a suspensive appeal unless there are good and valid reasons to justify the exercise of the Court's discretion to the contrary." *Schwab v. Kelton*, 399 So. 2d 624, 625 (La. App. 1st Cir. 1981).

Fairly read, the plain text of La. R.S. 13:4431 does not impact this discretion but, instead, expands the universe of individuals and entities who may move for suspensive appeal of a judgment restraining the enforcement of a law. Louisiana Revised Statute 13:4431 provides that:

> In any case where any district court has granted any restraining order, preliminary injunction, permanent injunction, or other process which may restrain the execution or enforcement of any provision of the constitution or of any act, law or resolution of the legislature of Louisiana, the defendant or defendants ***or any person or persons affected thereby, may*** suspensively appeal the order or judgment to the court of competent appellate jurisdiction.

La. R.S. 13:4431 (emphasis added). In the normal course, appeals and stay requests are restricted to parties and those who could have intervened in the matter. *See* La. Code Civ. P. art. 2086. La. R.S. 13:4431, however, confers broader standing to "any person or persons affected thereby," creating a more inclusive standard than the intervention standard.[2] Numerous Louisiana statutes do *exactly* the same thing—expand standing to pursue some sort of judicial relief beyond those who ordinarily have standing or qualify for intervention to anyone merely affected by an action.[3]

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[2] While La. R.S. 13:4431 permits anyone "affected by" an order to file a suspensive appeal, Article 2086 only permits those "who could have intervened in the trial court" to appeal. The standard for intervention under Article 2086 requires a showing that the proposed intervenor is more than merely "affected by" the proceeding. "It is well settled by jurisprudence that the requirements for intervention are twofold: the intervenor must have a justiciable interest in, and connexity to, the principal action, and the interest must be so related or connected to the facts or object of the principal action that a judgment on the principal action will have *a direct impact on the intervenor's rights*." *Mike M. Marcello, Inc. v. La. Gaming Control Bd*., 2004-0488, p. 4 (La. App. 1 Cir. 5/6/05); 903 So.2d 545, 548 (emphasis added).

[3] *See, e.g*., La. R.S. 40:580.5 ("*Any persons affected by an order* issued by the public officer may apply to the district court for an injunction restraining the public officer from carrying out the

"Courts must give to the words used by the legislature the meaning they are ordinarily understood to have, and when the law is clear and free from any ambiguity, the letter of it must not be disregarded under the pretext of pursuing its spirit." *Ardoin*, 360 So. 2d at 1336; La. Civ. Code art. 13 ("Laws on the same subject matter must be interpreted in reference to each other."). Reading La. R.S. 13:4431 to limit a district court's discretion to deny a suspensive appeal under Article 3612 contravenes well-accepted principles of statutory construction. The Louisiana Legislature has made clear that when it intends to mandate a stay (as Defendants argue is the case here), the statute is *directed to the Court, not to individuals* and uses mandatory imperatives ("shall") not discretionary language ("may").

The examples of mandatory stay provisions constructed in this manner (and *not* in the manner of La. R.S. 13:4431) are legion:

- "[U]pon the filing of a motion to stay by the defendant, ***the court shall*** stay the proceedings on a claim for defamation of character, libel, slander, or damage to reputation" under certain circumstances. La. R.S. 13:3381(A)(1) (emphasis added);

- "On motion by the corporation, ***a court shall*** stay a duplicative proceeding by a shareholder" under certain circumstances. La. R.S. 12:1-1437(A) (emphasis added);

- "***The court*** in which suit is pending" upon certain conditions being met "***shall*** on application of one of the parties ***stay*** the trial of the action". La. R.S. 9:4202 (emphases added);

- "The filing of an appeal pursuant to this Section ***shall stay*** the application of any rule, regulation, order, or other action of the commissioner to the appealing party" subject to certain explicit exceptions. La. R.S. 22:691.17(B) (emphasis added);

- "When discussion is pleaded successfully by a third possessor, or by the transferee in a revocatory action, ***the court shall stay*** proceedings against the third possessor or transferee until the creditor has executed his judgment against the property discussed." La. Code Civ. P. art. 5156 (emphasis added);

- Where a party to a criminal action withholds identifying information about a witness whose safety may be compromised by disclosure, under certain circumstances, "upon the motion

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provisions of the order." (emphasis added)); La. R.S. 6:1314 ("*Any person affected by a decision* of the commissioner may have such decisions reviewed only under and in accordance with the Administrative Procedure Act."); La. R.S. 30:926(A) ("*Any person affected* who is aggrieved by a rule . . . may obtain judicial review thereof in a suit instituted in the district court of the parish of East Baton Rouge or in the parish where the operations occur which give rise to the rule, regulation, order, or act."); *see also* La. Code Civ. P. art. 1880 ("When declaratory relief is sought, all persons shall be made parties who have or claim any interest *which would be affected by the declaration*, and no declaration shall prejudice the rights of persons not parties to the proceeding." (emphasis added)). Similarly, statutes regularly create rights of action for an identified class of individuals to sue for a particular wrong. *See, e.g.*, La. R.S. 51:137 ("Any person who is injured in his business or property by any person by reason of any act or thing forbidden by this Part may sue in any court of competent jurisdiction and shall recover threefold the damages sustained by him, the cost of suit, and a reasonable attorney's fee.").

of either party, ***the court shall order an automatic stay*** of all matters related to the disclosure of information about the witness." La. Code Crim. P. art. 729.7(C) (emphasis added);

- If a judgment debtor shows that a foreign judgment has been appealed, "***the court shall stay*** enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated." La. R.S. 13:4244(A) (emphasis added);

- If certain succession proceedings are brought in two courts, "the court in which the proceeding was first brought shall retain jurisdiction over the succession, and ***the other courts shall stay*** their proceedings." La. Code Civ. P. art. 2812 (emphasis added);

- In *qui tam* actions, "upon showing by the attorney general that certain actions of discovery by the qui tam plaintiff or defendant would interfere with a criminal or civil investigation or proceeding arising out of the same facts, ***the court shall stay*** the discovery for a period of not more than ninety days." La. R.S. 39:2158(F)(1) (emphasis added);

- If the parties are unable to reach an agreement as to the value of shares in a corporate dissolution proceeding, "***the court***, upon application of any party, ***shall stay*** the [dissolution] proceedings and determine the fair value of the petitioner's shares." La. R.S. 12:1-1434(D) (emphases added);

- "If a shareholder's right to withdraw from a corporation is recognized by a judgment in an action under R.S. 12:1-1435(G), ***the court shall stay*** the proceeding for a period of at least sixty days from the date that the judgment is rendered . . . ." La. R.S. 12:1-1436(B) (emphasis added);

- "If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Act, ***the court of this state shall stay its proceeding*** and communicate with the court of the other state." La. R.S. 13:1818(B) (emphasis added).

La. R.S. 13:4431 is not even directed to the District Court, nor does it use mandatory language.

Reading La. R.S. 13:4431 to eliminate district courts' discretion to deny suspensive appeals would improperly render the permissive "may" of the statute mandatory—and it would do so despite the fact that the "may" does not even apply to the district court in the first instance, as the statute does not direct the court to do *anything*. It is a "'cardinal rule of statutory interpretation that the word "may" is permissive.'" *Pierce Founds, Inc. v. Jaroy Const., Inc.*, 2015-0785 (La. 5/3/16); 190 So. 3d 298, 304 (citation omitted); *see, e.g.*, *id.* (finding "fundamental error in the court of appeal's analysis" where it "render[ed] the permissive 'may' . . . mandatory").

B. <u>Defendants' Litigation Conduct Demonstrates That La. R.S. 13:4431 Modifies Standing to Move for Suspensive Appeal and Nothing Else.</u>

Defendants' own conduct in this litigation belies their argument that La. R.S. 13:4431 confers a stay as of right. La. R.S. 13:4431 explicitly addresses stays of TROs. La. R.S. 13:4431 ("In any case where any district court has granted any restraining order . . ."). Defendants argued to the District Court that enjoining the Trigger Bans would cause the State irreparable harm. *See,*

e.g., Defs.' July 12, 2022, Opp. to TRO Mot. at 7, *June Medical Services, LLC, et al. v. Landry, et al.*, No. C-720988 (arguing that a TRO "prohibiting the enforcement of these statutes will impose ***irreparable harm to the State*** caused by the non-enforcement of laws that are constitutional until proven otherwise" (emphasis added)). Yet Defendants never moved for a suspensive appeal of either TRO, which Defendants argue would have required nothing more than "ministerial" paperwork. Defs.' Writ App. at 13.

Defendants' decision not to move for suspensive appeal of the TROs—while nevertheless claiming irreparable harm—can only be explained by the reality that Article 3612 controls the appeals process for any injunctive order *and* it prohibits appealing TROs. La. Code Civ. P. art. 3612(A) ("There shall be no appeal from an order relating to a temporary restraining order."). Despite their arguments to the contrary, Defendants' litigation conduct demonstrates that Article 3612 ultimately controls here and thus provides the district court with discretion to deny suspensive appeals.

It is a settled principle of statutory construction (and one Defendants vigorously argued in this case, *see* Defs.' July 7, 2022, Opp. to App. for Prelim. Inj. at 13, *June Medical Services, LLC, et al. v. Landry, et al.*, No. C-720988), that "courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter." *Davidson v. State*, 2020-00976, p. 5 (La. 5/13/21); 320 So. 3d 1021, 1024 *reh'g denied*, 2020-00976 (La. 6/29/21) (citation omitted). Defendants purport to read La. R.S. 13:4431 as conflicting with Article 3612(B) of the Code of Civil Procedure. *See* Defs.' Writ App. at 10 (arguing La. R.S. 13:4431 "controls over" La. C.C.P. Art. 3612). This Court has never said so. Plaintiffs, by contrast, properly harmonize both provisions as providing courts discretion to grant or deny a suspensive appeal, while also enlarging the individuals or entities who may apply for such appeal. *See, e.g.*, *Davidson*, 2020-00976, p. 10; 320 So. 3d at 1028 (reading amendment as "clarify[ing]" rather than "displac[ing]" other law consistent with settled statutory interpretation principles).

C. <u>As the District Court Ruled, Civil Law Principles Separately Establish that District Courts Enjoy Discretion to Deny Suspensive Appeals.</u>

Defendants argued to the First Circuit that the District Court incorrectly relied on principles of civil law "to simply not apply La. R.S. 13:4431." Defs.' Writ App. at 15. Yet Defendants' own

authority approvingly describes *exactly* what the District Court did in reconciling the two statutes at issue. This Honorable Court has explained that:

> Louisiana was born into and stringently holds onto its legal tradition, unique among its sister states, that of the civil law tradition. Whereas common law may look to jurisprudence as its primary source of law, civil law looks to the statutes and codes provided by the people, through their duly elected representatives, as its primary source of law. ***For us to so blindly adhere to this Court's previous, incorrect interpretation of the plain language and intent of Act 312, would certainly disregard our civil law tradition by elevating our own jurisprudence to equal footing with the laws enacted by our Legislature. Instead, we find that adhering to our civil tradition requires we first look to our primary source of law for the matters now before us, Act 312 itself.***

State v. La. Land & Expl. Co., 2020-00685, p. 10 (La. 6/30/21) (emphasis added). Indeed, in *Louisiana Land*, this Court overruled its prior precedent misinterpreting a statute relying, instead, on the plain language of the statute as required by civil law doctrines. *Id.* at 13. "The rules of statutory construction provide that when the words of a statute are clear and unambiguous, and the application of the law does not lead to absurd consequences, the statute should be applied as written and no further effort should be made to determine the legislature's intent. La. C.C. art. 9; La. R.S. 1:4." *Id.* at 12.

In so doing, this Court recognized that it was not only departing from prior Supreme Court precedent interpreting the statute, but also departing from law of the case (which the dissent rightly argued was a stronger doctrinal boundary than precedent and which is not at issue in this case. *See, e.g.*, *id*. at 2–3 (Weimer, C.J., dissenting)); *see also id.* at 10 (majority opinion). The majority emphasized that, because prior precedent "ignored these basic rules in their interpretation of" the challenged statute, the appellate court was correct in reversing the district court based on the plain language of the statute which was "clear and unambiguous." *Id*. at 12.

That is exactly what the District Court did here. The District Court interpreted both Article 3612 and La. R.S. 13:4431, holding that the statutes' words, themselves, reign supreme (as they must) and determined that La. R.S. 13:4431 did not infringe on its discretion to deny the suspensive appeal. *See* App'x A at 2 ("Nowhere in the [Louisiana] Civil Code or in any other Louisiana legislative or constitutional documents are prior decisions identified as sources of law.").

The "jurist in a civil law system ha[s] more freedom when deciding cases because the judge is not bound by the principle of *stare decisis* [and] the civil law statutes and codes are usually drafted in more general terms than common-law statutes and thus depend more on judges to render

them concrete through judicial interpretation." *Unwired Telecom Corp. v. Par. of Calcasieu*, 2003-0732, p. 18 (La. 1/19/05); 903 So.2d 392, 405–06. Here, the District Court was not bound by the handful of cases Defendants cited interpreting La. R.S. 13:4431, especially when the plain text of the statute (and this Court's competing precedent) says otherwise. In any event, the great weight of statutory authority demonstrates that where a statute is, in fact, mandatory it says so, as explained above. Indeed, the District Court echoed this Court's declarations that "the notion of Stare Decisis, derived as it is from the common law, should not be thought controlling in this state. The case law is invaluable as previous interpretation of the broad standards" of the statute at issue "***but it is nevertheless secondary information***." *Ardoin*, 360 So. 2d at 1334 (emphasis added).

Defendants' corollary argument that the District Court inserted an improper balancing test, Defs.' Writ App. at 15, is disingenuous at best. Once the District Court determined that it had discretion to deny the suspensive appeal, it had to exercise that discretion in a reasoned manner, and it necessarily had to balance the interests of the parties and public policy concerns in exercising that discretion. In so doing, the District Court reasoned that protecting Plaintiffs' constitutional right of notice of what conduct might subject them to criminal penalties outweighed Defendants' interest in enforcing the Trigger Bans. The District Court explained that in exercising its discretion, it balanced the constitutional rights "of adequate process and notice to the people of Louisiana" against the statutory rights of the state to enforce its legislation. App'x A at 2. The District Court's exercise of discretion through this balancing test was lawful and correct. Other than arguing that La. R.S. 13:4431 did not provide the District Court *any* discretion—which is incorrect, as explained above—Defendants did not argue to the First Circuit why striking this balance was not a proper exercise of that discretion.

D. <u>In Any Event, this Court's Rulings Establish Discretion to Deny Suspensive Appeals Sought under La. R.S. 13:4431.</u>

This Court has squarely held that La. R.S. 13:4431 does not create a right to a suspensive appeal. In *Guillot v. Nunez*, this Court rejected relator's argument that he was "entitled to a suspensive appeal as a matter of right" and denied the writ application, ruling that the district court was correct to deny the application for a suspensive appeal after the district court restrained enforcement of a statute. 225 La. at 1038–39; 74 So. 2d at 206. This case, alone, disposes of Defendants' argument below that courts have "no discretion to deny a suspensive appeal from a preliminary injunction that enjoins enforcement of a state law." Defs.' Writ App. at 10. Moreover,

when discussing La. R.S. 13:4431, this Court has made clear that district courts enjoy discretion to deny suspensive appeals. *See, e.g.*, *Baton Rouge Coca-Cola Bottling Co. v. Gen. Truck Drivers, Warehousemen & Helpers, Loc. Union No. 5*, 403 So. 2d 632, 636 (La. 1981) (employing permissive and not mandatory language in explaining that La. R.S. 13:4431 "***allows suspensive appeals in certain cases*** where an injunction has been issued." (emphasis added)).

Defendants' application to the First Circuit argues that *Guillot* represents the "sole exception to appeal-of-right under La. R.S. 13:4431" recognized only because that case involved preventing "irreversible destruction of physical property." Defs.' Writ App. at 14. But all irreparable harms (and certainly the violation of the Due Process Clause and Rights of the Accused in the Louisiana Constitution) are, by definition, irreversible. *See, e.g.*, *Historic Restoration, Inc. v. RSUI Indem. Co.*, 2006-1178, pg. 11 (La. App. 4 Cir. 3/21/07); 955 So. 2d 200, 208, *writ denied,* 2007-0840 (La. 6/22/07); 959 So. 2d 497 ("Irreparable harm means that money damages cannot adequately compensate for the injuries suffered and that the injuries 'cannot be measured by pecuniary standards.'" (citation omitted)).

Indeed, were there a hierarchy of irreparable harm (which there is not), destruction of property would be the lowest rung as it is the most obvious and easiest kind of harm to be cured by money damages—in the case of *Guillot*, money could be immediately deployed to build another slot machine. *See also Wood v. Gibson Const. Co., Inc*., 313 So. 2d 898, 901 (La. App. 2 Cir. 1975), *writ refused sub nom. Wood v. Gibson Constr. Co., Inc.*, 320 So. 2d 549 (La. 1975) ("The record does not support a finding that, if the flooding of his property recurs, the damage thereto will be so extensive that it cannot be adequately measured and compensated by a money award, in the event it is determined that defendant is legally responsible.").

Defendants' attempt to distinguish *Guillot* on the basis of property damage, Defs.' Writ App. at 13–14, was wrong. In fact, *Guillot*'s reasoning applies directly to this case—*but with even more force*—because the threat of constitutional violations is *per se* irreparable. *See, e.g.*, *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/1999); 749 So. 2d 597, 599–600 ("A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful."); *cf. Hill v. Jindal*, 2014-1757, p. 23 (La. App. 1 Cir. 6/17/15); 175 So. 3d 988, 1006, *writ denied,* 2015-1394 (La. 10/23/15) (enjoining enforcement of executive order and noting "[t]he people of Louisiana are served only if the courts recognize and

enforce the provisions of the constitution."); *La. State Bd. of Med. Examiners v. Moran*, 290 So. 2d 383, 386 (La. App. 4 Cir. 1974) (concluding trial court abused its discretion in granting suspensive appeal of a preliminary injunction because the "granting of an injunction . . . on the one hand and [] suspending the effect of the injunction pending appeal on the other is a gross inconsistency").

Defendants' reading would insulate legislative enactments from meaningful judicial scrutiny and leave courts powerless to prevent irreparable harms except in a narrow set of circumstances involving harm to physical property[4]—an absurd result that would surely lead to a host of dangerous, unintended consequences, including this case where individuals could be convicted of crimes for which they have no "[c]onstitutional notice for lawful implementation and for full and immediate enforcement," and be sentenced to up to 15 years in prison. App'x A at 3; *see, e.g.*, La. Civ. Code art. 9 (creating exception to rule that laws must be applied as written where doing so would "lead to absurd consequences").

This Court has rejected the approach Defendants advocated successfully to the First Circuit—and which the First Circuit relied upon in its decision without citing any statutory language but, instead, two cases—when attempting to reconcile two statutes:

> Instead of beginning with the keystone of responsibility, Article 2315, and reading La.R.S. 9:2794 in the light of it and other pertinent articles, the intermediate court approached the problem as one of deciding the extent, if any, to which the jurisprudence had been amended by the legislative act. Thus, rather than reading La. R.S. 9:2794 as the lawmakers' indication of how the basic principle of Article 2315, as amplified by Article 2316, should be applied in a particular class of cases, the appeals court measured the enactment solely against language contained in a judicial opinion. ***The basic error in this method of interpretation is that it not only ignores the first principles of our law but it also assumes that jurisprudence is equivalent to legislation instead of treating it as judicial interpretation which may or may not adequately reflect the meaning of the laws for contemporary purposes***.

Ardoin, 360 So. 2d at 1335–36 (emphasis added). Indeed, in *Ardoin,* this Court based its interpretation reconciling competing statutes on the Louisiana Constitution's guarantee that civil and criminal statutes "be applied equally throughout the state to all citizens," *id*. at 1336, just as

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[4] In any event, even if the Court were to determine that denial of suspensive appeal is proper only where destruction of property would result, denial of suspensive appeal would be proper here because enforcement of the Trigger Bans could force Plaintiff Hope to "shut down its doors and close." Ex. B, Pittman Aff. ¶ 19. LDH, in fact, has already issued a cease and desist letter to Hope. App'x F.

the District Court did here when ruling that Defendants' proposed interpretation could not be accepted because it would contravene due process principles.

II. DEFENDANTS' PURPORTED AUTHORITY DOES NOT HOLD OTHERWISE.

A. La. R.S. 13:4431 Does Not Apply Because There Has Been No Final Ruling on Unconstitutionality.

Even if the cases Defendants cited in their Petition and Writ Application to the First Circuit were authoritative (which they are not), it would not matter because these cases plainly do not apply to the situation here. Defendants' purported authority stands for nothing more than the recommendation that suspensive appeals be granted *if and when* a declarative finding of unconstitutionality of a statute has been issued. Indeed, the very cases relied upon by the First Circuit involve declarations of unconstitutionality. *See, e.g.*, *Womack v. La. Comm'n on Governmental Ethics*, 250 La. 37, 39 (La. 1967); 193 So. 2d 777 (issuing *permanent injunction* where, "[i]n the judgment the district court decreed the entire act to be unconstitutional"); *Manuel v. State*, 95-2156 (La. 8/24/95); 695 So. 2d 953, *opinion after grant of writ*, 95-2189 (La. 3/8/96), 692 So. 2d 320 ("The execution of the trial court's preliminary injunction judgment and declaration of unconstitutionality of the statute are stayed pending further orders of this Court.").

Moreover, *Manuel v. State*, which Defendants and the First Circuit relied upon, makes clear that even when there is a final declaration of unconstitutionality, the district court still has discretion to deny the suspensive appeal: "The execution of the trial court's preliminary injunction judgment and declaration of unconstitutionality of the statute are stayed pending further orders of this Court. This Court ***almost invariably*** grants such a stay in cases in which a single district judge has declared a law or ordinance unconstitutional." 95-2156 (La. 8/24/95); 692 So. 2d 320 (emphasis added).

Here, however, there has ***not*** been any final finding or declaration of unconstitutionality. The standard necessary to grant the preliminary injunction was only that Plaintiffs had made a *prima facie* showing of likelihood of success, and that is the standard upon which the District Court granted Plaintiffs' requested relief. *See Gen. Motors Acceptance Corp. v. Daniels*, 377 So. 2d 346, 348 (La. 1979); *Ouachita Par. Police Jury v. Am. Waste & Pollution Control Co.*, 606 So. 2d 1341, 1350–51 (La. App. 1 Cir. 10/14/92), *writ denied,* 609 So. 2d 234 (La. 1992); *see also* App'x A at 3 n.10 (adopting Plaintiffs' conclusions of law); App'x B at 14.

B. La. R.S. 13:4431 Does Not Apply Because Enforcement of the Trigger Bans Is Not a Core Function of Defendants.

Defendants' cases argue that La. R.S. 13:4431 was passed to ensure, in part, that when a law is restrained, it does not result in government officials or agencies being "restrained from the performance of duties" they have the right to perform, where such performance is "a duty imposed by law for the necessary maintenance and operation of the government." *Hirt v. New Orleans*, 225 La. 1077, 1085–86 (La. 1953); 74 So. 2d 380, 383; *Guillot*, 225 La. at 1038–39; 74 So. 2d at 206 (recognizing La. R.S. 13:4431 "was passed for the purpose of preventing interference by the lower courts, through the process of injunction, with the performance by public officers of these duties imposed upon them by law ***for the necessary maintenance and operations of government and of their offices***." (emphasis added)). This policy goal dovetails perfectly with the statute's main effect, which is to expand the universe of individuals who have standing to challenge the statute and seek a suspensive appeal within the district court's discretion, ensuring that if an official who is not a defendant is impacted by the restrained law, that official can move for relief.

The cases Defendants rely upon to make this point apply to a very specific and narrow subset of the law: instances where state agencies created commissions for the specific purpose of conducting certain investigations or passed a law directing a state agency to do a specific thing, *i.e.*, direction from the Legislature to the government officials, themselves, to *take certain action*. *See, e.g.*, *Womack*, 250 La. at 39; 193 So. 2d at 777 (granting suspensive appeal after district court permanently enjoined Commission on Governmental Ethics from investigating plaintiff because the "effect of the district court's decision is so far reaching as to make ineffective any proceedings or action of the commission as constituted under the act"); *Hirt*, 225 La. at 1085–86 (granting suspensive appeal after district court enjoined Commission Council of New Orleans from appropriating or expending any funds or exercising any functions pursuant to the City Charter in connection with investigation and hearings, which were necessary to the "maintenance and operation of the government of the City"); *Wall v. Close*, 201 La. 986, 996–97; 10 So. 2d 779, 783 (1942) (granting suspensive appeal after plaintiff challenged the constitutionality of act that created Department of Finance and court enjoined Director of Finance from spending funds pursuant to act).

And even within that line of cases, where the law directed the confiscation and destruction of slot machines, the district court could still exercise discretion to deny the suspensive appeal

where the injunction was "not such an interference with relator in the pursuance of his duties as to affect the orderly operation of his office." *Guillot*, 225 La. at 1039; 74 So. 2d at 206. Defendants' authorities have no bearing on laws that do not *direct* the state official or agency to do something. Here, however, Defendants even argued to the Civil District Court in Orleans Parish during the hearing on the Venue Exception that they have limited power to enforce the laws at issue.[5] Regardless, the preliminary injunction in this case does not interfere with or prevent the Attorney General or LDH (the Defendants in this case against whom the preliminary injunction is issued) from performing their official duties as necessary to advance the functioning of their roles in state government.[6] Only where the relief granted by the district court would prevent the functioning of government—a circumstance not met here—would Defendants' claim to a suspensive appeal have any merit and even then, the district court would retain its discretion to deny that appeal.[7]

In any event, this Court clearly is not bound by a handful of cases from over 50 years ago. Instead, under the doctrine of *jurisprudence constante*, "it is only when courts consistently recognize a long-standing rule of law ***outside of legislative expression*** that the rule of law will become part of Louisiana's custom under Civil Code article 3 and be enforced as the law of the state." *Doerr v. Mobil Oil Corp.*, 2000-0947 p. 14 (La. 12/19/00); 774 So. 2d 119, 129, *opinion corrected on reh'g,* 2000-0947 (La. 3/16/01); 782 So. 2d 573. And even when courts consistently recognize a long-standing rule of law, such a judicially created rule of law is still a secondary

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[5] Article 4 § 8 of the Louisiana Constitution provides the only method for the Attorney General to enforce criminal statutes. Under that provision, the Attorney General has the power "(a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action" "for cause, *when authorized by the court which would have original jurisdiction and subject to judicial review*." La. Const. art 4 § 8 (emphasis added). Article 4 § 8 also permits the Attorney General to merely "advise and assist in the prosecution of any criminal case" "upon the written request of the district attorney." *Id*.

[6] Defendants attempted to argue otherwise in the District Court by contending that "the Secretary of the Department of Health's duties are certainly barred because she cannot use violations of the Trigger Bans as a means to enforce Plaintiffs' licensing while the statutes are enjoined." Defs.' Reply to Pet. for Suspensive Appeal at 8, *June Medical Services, LLC, et al. v. Landry, et al.*, No. C-720988. But the Trigger Bans that the District Court enjoined are criminal statutes that impose criminal penalties of jail time and fines. They have nothing to do with LDH's authority to grant, suspend, or revoke licenses to provide health care, which is governed by separate statutory schemes, such as Louisiana's Outpatient Abortion Facility Licensing Laws. *See* La. R.S. 40:2175.1–2175.7 and 40:2199(A)(1).

[7] Defendants' own conduct suggests that Defendants do not believe enforcing the Trigger Bans is part of their core function as Defendants did not seek suspensive appeal, despite their position that La. R.S. 13:4431 confers suspensive appeal as of right.

source of law to statutes and code provisions. *See Bergeron v. Richardson*, 2020-01409, p. 9 (La. 6/30/21); 320 So.3d 1109, 1116 ("*Jurisprudence constante* does not preclude us from overruling [a prior decision] and applying the plain language of" the statute).

C. Were Defendants Correct, No Party Could Ever Obtain Preliminary Relief from an Unconstitutional Statute.

Practically, Defendants' position would eliminate all plaintiffs' ability to obtain preliminary relief from any challenged statute, basically reading the preliminary injunction out of existence. That is a far-reaching and absurd consequence to read into a statute that nowhere says any such thing. In *Guillot*, this Court further reasoned that if the district court was not free to enjoin statutes based on *constitutional challenges*, the very constitutionality of La. R.S. 13:4431 would, itself, be at issue:

> However, whereas the provisions of the statute are couched in sweeping language, we do not think that they were ever intended to apply to a case such as this, where the granting of a suspensive appeal would have the effect of restoring to relator the right of destroying the articles which are the subject of the suit during its pendency on appeal and, thus, render the issue moot before it can be heard in the appellate court. **To hold otherwise might produce unconstitutional results and perhaps affect the validity of the law** . . . .

Guillot, 225 La. at 1038–39; 74 So. 2d at 206 (emphasis added). It cannot be the case that in the entire state of Louisiana, plaintiffs cannot obtain preliminary relief from an unconstitutional statute. Such a rule would seriously undermine the balance of powers among the branches of government, and would render the preliminary injunction procedure essentially meaningless when used to challenge any law.

Here, the District Court found that "Constitutional ambiguity in Louisiana codifying abortion-criminality exists at this time . . . Constitutional notice for lawful implementation and for full and immediate enforcement against crimes of abortion through the 'Trigger Bans' do not exist at this time." App'x A at 3. The District Court also found that the Trigger Bans "could unconstitutionally be reasonably misunderstood and misapplied by healthcare professionals, and by interpretation of ordinary citizens," *id*. at 3, and in adopting Plaintiffs' Proposed Findings of Fact, that such misunderstandings will chill Plaintiffs' and other providers' ability to provide timely health care to women in Louisiana due to the threat of prosecution under vague laws that they do not understand. App'x B at 13.

If Defendants' reading of the law were correct, in no circumstances would any plaintiffs ever be able to protect themselves from unconstitutional *criminal* laws being enforced against them, whether on vagueness grounds or otherwise, until final resolution of a lawsuit after both the trial court and appellate proceedings are complete. Indeed, under Defendants' reading, an individual could challenge a criminal statute as unconstitutionally vague and, no matter how meritorious the challenge, that individual could still be imprisoned for violating that statute during the pendency of the lawsuit and any appeals in violation of their constitutional due process rights. That cannot be.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court exercise its supervisory jurisdiction and reverse the First Circuit's judgment and reinstate the District Court order denying the suspensive appeal.

Respectfully submitted:

/s/ Ellie T. Schilling
Ellie T. Schilling, 33358
SCHONEKAS, EVANS, McGOEY
& McEACHIN, LLC
909 Poydras Street, Suite 1600
New Orleans, LA 70112
Phone: (504) 680-6050
Fax: (504) 680-6051
E-mail: Ellie@semmlaw.com

Joanna Wright*
Sabina Mariella*
Brianna Hills*
Lindsey Ruff*
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards
New York, New York 10001
Phone: 212-446-2359
Email: jwright@bsfllp.com

Jenny Ma*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Phone: (917) 637-3600
Fax: (917) 637-3666
Email: jma@reprorights.org

Attorneys for June Medical Services, LLC; Kathaleen Pittman; Medical Students for Choice; and Clarissa Hoff, M.D.

* Motions for Admission *Pro Hac Vice* Forthcoming

CERTIFICATE OF SERVICE

In accordance with Rule X of the Rules of the Louisiana Supreme Court, the undersigned certifies that a copy of the above and foregoing has been served on the parties through their counsel of record below by electronic mail and by depositing same in the United States Mail, postage prepaid, on this 4th day of August, 2022:

Elizabeth Baker Murrill
Angelique Duhon Freel
Alexander T. Reinboth
Louisiana Department of Justice
Post Office Box 94005
Baton Rouge, Louisiana 70804
murrile@ag.louisiana.gov
FreelA@ag.louisiana.gov
ReinbothA@ag.louisiana.gov

James M. Garner
John T. Balhoff
Sher Garner Cahill Richter Klein & Hilbert, LLC
909 Poydras Street, 28th Floor
New Orleans, Louisiana 70112
jgarner@shergarner.com
jbalhoff@shergarner.com

Chief Judge Donald R. Johnson
19th Judicial District Court
300 North Blvd
Baton Rouge, LA 70802
jyking@19thjdc.org
arankins@19thjdc.org

Honorable Rodd Naquin
Clerk of Court
Louisiana First Circuit Court of Appeal
1600 North Third Street
Baton Rouge, Louisiana 70802
Telephone: (225) 382-3000

/s/ Ellie T. Schilling
Ellie T. Schilling