

SUPREME COURT OF LOUISIANA

NO. 2022-OC-1198

JUNE MEDICAL SERVICES, LLC, et al.

versus

JEFF LANDRY, in his official capacity as Attorney General of Louisiana, et al.

**ON APPLICATION FOR SUPERVISORY WRITS TO
THE LOUISIANA FIRST CIRCUIT COURT OF APPEAL, NO. 2022-CW-0806,
AND TO THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF EAST BATON ROUGE,
NO. 720988, DIVISION "B," SECTION 24
THE HONORABLE DONALD R. JOHNSON, PRESIDING**

CIVIL PROCEEDING

**MOTION OF CERTAIN LOUISIANA LEGISLATORS
FOR LEAVE TO APPEAR AS *AMICUS CURIAE* IN SUPPORT OF
DEFENDANT-APPLICANT JEFF LANDRY AND SECRETARY COURTNEY N.
PHILLIPS OF THE LOUISIANA DEPARTMENT OF HEALTH**

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ATTORNEYS FOR THOSE LEGISLATORS APPEARING ON EXHIBIT A

MAY IT PLEASE THE COURT:

Certain duly elected Members of the Legislature of the State of Louisiana, by and through undersigned counsel, respectfully request leave of this Court to appear as *amicus curiae* in support of Defendant-Respondent Jeff Landry and Secretary Courtney N. Phillips of the Louisiana Department of Health, in this writ proceeding, and believe that there are matters of law affecting the rights of the people of this state, as well as the respective roles of the branches of government of this State, on which your Movants have a duty to provide their perspective as Legislators and members of that branch of this State's government. Applicants have read the briefs of the parties which have so far been submitted and accordingly request the Court to grant them leave to appear as *amicus curiae*.

Respectfully submitted,

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/s/Glenn L. Langley

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CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing MOTION OF CERTAIN LOUISIANA LEGISLATORS FOR LEAVE TO APPEAR AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-RESPONDENT JEFF LANDRY AND SECRETARY COURTNEY N. PHILLIPS OF THE LOUISIANA DEPARTMENT OF HEALTH, has been served on all counsel of record via email, facsimile, and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 10th day of August, 2022:

/s/ Glenn L. Langley
GLENN L. LANGLEY

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**BRIEF OF *AMICUS CURIAE* IN SUPPORT OF
DEFENDANT-RESPONDENT JEFF LANDRY AND SECRETARY COURTNEY N.
PHILLIPS OF THE LOUISIANA DEPARTMENT OF HEALTH**

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ATTORNEYS FOR THOSE LEGISLATORS APPEARING ON EXHIBIT A

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MAY IT PLEASE THE COURT:

I. INTEREST OF AMICUS CURIAE

Appearers are Legislators, duly elected members of the Legislative Branch of the government of the State of Louisiana, who submit this *amicus curiae* brief in support of the opposition to the writ application of the Plaintiffs, which opposition was filed by the Defendants herein, Louisiana Attorney General Jeff Landry and Secretary Courtney N. Phillips of the Louisiana Department of Health. These Legislators, both members of the House of Representatives and the Senate, appear for the purpose of urging this Court to deny the writ and to affirm the decision of the First Circuit, which, after considering the matter for a full five hours, elected to follow the explicit and unambiguous provisions of the law concerning suspensive appeals of rulings declaring laws to be unconstitutional.

II. STATEMENT OF THE CASE

Plaintiffs, June Medical Services, LLC, Kathleen Pittman, Medical Students for Choice, and Clarissa Hoff, M.D., filed an Application for Preliminary Injunction, seeking to enjoin Defendants from the enforcement and implementation of La. R.S. 14:87.7, 14:87.8, and 40:1061. On July 21, 2022, the District Court granted Plaintiffs' Application for Preliminary Injunction, enjoining Defendants and their officers, agents, and assigns from the enforcement and implementation of La. R.S. 14:87.7, 14:87.8, and 40:1061, until a trial on Plaintiffs' request for a permanent injunction. Defendants petitioned to appeal suspensively from the Judgment granting Plaintiffs' Application for Preliminary Injunction. On June 25, 2022, the District Court denied the Defendants' petition for a suspensive appeal from its Judgment. The Defendants then filed an application for a supervisory writ with the Court of Appeal seeking the suspensive appeal from the District Court's ruling. The Louisiana First Circuit Court of Appeal correctly reversed the district court and ordered it to grant a suspensive appeal to Defendants. Plaintiffs now ask this Court to grant supervisory review of the First Circuit's ruling.

III. ARGUMENT

A. La. R.S. 13:4431 Protects Legislative Action From Judicial Usurpation

Legislators of the State have a substantial, constitutionally mandated interest in maintaining the separation of powers within the Government of this State, and the enforcement of laws duly and legally enacted by the Legislature, including the laws challenged by the Plaintiffs in this suit.¹ To that end, the Legislators filing this brief join Defendants/Respondents in urging this Court to deny the writ sought by the Plaintiffs.

An important tool in the preservation of the separation of powers is La. R.S. 13:4431, which provides:

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. Rev. Stat. Ann. § 13:4431.

To interpret this statute any other way than what the plain language of the statute reads is nonsensical and would give a single judge the power to undo, or at least suspend, the work of the Legislative Branch of this State's Government in violation of the state Constitution's prohibition of one branch of government exercising the rights and powers of another.² In *Wall v. Close*, 201 La. 986, 10 So. 2d 779 (1942), the plaintiff challenged the constitutionality of an act that created a Department of Finance and sought to enjoin the defendants from spending funds pursuant to the act. *Id.*, 201 La. at 990-91, 10 So. 2d at 781. The district court found the act to be unconstitutional and granted a preliminary injunction to restrain the act's enforcement. *Id.* There, like here,

¹ "The powers of government of the state are divided into three separate branches: legislative, executive, and judicial." (La. Const. Art. II, Sec. 1). "Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others." (La. Const. Art. II, Sec. 2)

² This Court held in *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.*, 2010-0193, p.12 (La. 1/19/2011), 56 So.3d 181, 189 that "[W]e decline to consider the opinions of the legislators or other witnesses to the meaning of the statute or the legislature's intent in passing Section 3(C) of Act 456. How Red Stick, State employees, or even an individual legislator interpreted Section 3(C) is irrelevant. The only relevant issue is the intent of the entire legislature in enacting Act 456." As such, this Court should completely disregard and exclude statements offered by elected officials, current and former, regarding their personal interpretations of La. R.S. 13:4431 as Amicus on behalf of Plaintiffs have.

Defendants moved for a suspensive appeal pursuant to La. R.S. 13:4431, but the district court refused to grant the motion. *Id.*, 201 La. at 991, 10 So. 2d at 781. The defendants asked this Court to grant the suspensive appeal, which it did. *Id.* This Court explained that the purpose behind granting parties the right to a suspensive appeal was to prevent district courts from having the authoritative word on a statute’s enforceability. “The purpose of [La. R.S. 13:4431] is to prevent the district courts from restraining the execution or enforcement of any provision of the Constitution or any act, law or resolution of the Legislature until it is declared invalid or unconstitutional by final decisions of the courts.” *Id.*, 201 La. at 996, 10 So. 2d at 783. This statute furthers the Legislature’s interests in ensuring the laws it passes as the People’s elected representatives are not unilaterally blocked for indeterminate periods subject to the vagaries of a district court’s discretion to manage its trial docket. As long as a party suspensively appeals, the statute **will not be enjoined until it is declared unenforceable by a final decision of the courts.**

B. La. R.S. 13:4431 Is Not Discretionary.

This Court has long acknowledged this right to a suspensive appeal and has enforced it accordingly. In *Womack v. Louisiana Commission on Governmental Ethics*, 250 La. 37, 193 So. 2d 777 (1967) the Nineteenth Judicial District Court issued an injunction against the enforcement of a Louisiana statute based on a finding that the statute was unconstitutional.³ The defendants in that case sought a suspensive appeal pursuant to La. R.S. 13:4331, but, as here, the district court denied that petition.⁴ The defendants applied to the Louisiana Supreme Court for supervisory review of that denial, which ruled that the defendants “are entitled to a suspensive appeal.”⁵

³ *See id.* at 39, 193 So. 2d at 777.

⁴ *See id.* at 39-40, 193 So. 2d at 778.

⁵ *Id.* at 41, 193 So. 2d at 778 (also discussing *Hirt v. City of New Orleans*, 225 La. 1077, 1086, 74 So. 2d 380, 383 (1953) (“The lower court has no right to prevent the investigation it has started by means of injunction. The trial judge . . . should nevertheless have, under the provisions of [La. R.S. 13:4431], granted the relators a suspensive appeal.”); *Wall v. Close*, 201 La. 986, 996, 10 So. 2d 779, 783 (1942) (“The purpose of [La. R.S. 13:4431] is to prevent the district courts from restraining the execution or enforcement of any provision of the Constitution or any act, law or resolution of the Legislature until it is declared invalid or unconstitutional by final decisions of courts.”)).

Similarly, in *Manuel v. State*,⁶ a district court issued a preliminary injunction against the enforcement of a statute by finding the statute to be unconstitutional.⁷ The State petitioned for a suspensive appeal, which the district court denied.⁸ This Court found that the denial of a suspensive appeal was improper.⁹ In granting a writ application in favor of the State's right to a suspensive appeal, the Court stated that it "almost invariably grants a stay in cases in which a single district judge has declared a law or ordinance unconstitutional."¹⁰

The *raison d'être*, of La. R.S. 13:4431 is clear, and the situation presented to this Court is a prime example of its importance. Litigants always have the right to seek an interlocutory appeal, or a supervisory writ, though the granting of such writs is most often discretionary. However, in the case of a suspensive appeal under La. R.S. 13:4431, the statute does not speak in terms of discretion. Instead, the suspensive appeal is of right. This section was enacted for the purpose of preventing interference by lower courts, through process of injunction, with public officers' performance of those duties imposed upon them by law for the necessary maintenance and operations of government and of their offices until such time as Supreme Court had opportunity of finally disposing of a matter. *Guillot v. Nunez*, Sup.1953, 225 La. 1035, 74 So.2d 205. *See also, Hirt v. City of New Orleans*, Sup.1953, 225 La. 1077, 74 So.2d 380.

C. The Will of the People Expressed by the Legislature Regarding the Unborn Must Be Protected

The Legislature of the State of Louisiana has long sought to protect the unborn and has consistently provided that abortion should be prohibited except in rare circumstances. In 2006, the Legislature passed the Human Life Protection Act to ensure that when *Roe v. Wade* was overturned, elective abortions would be prohibited in Louisiana. In 2020, Louisiana citizens passed the Love Life Amendment with 62% of the vote to ensure that there is no right to abortion in the Louisiana Constitution. In 2022, the Legislature passed Act 545, the Reaffirmation of the Human

⁶ 1995-2189 (La. 3/8/1996), 692 So. 2d 320.

⁷ *See id.* at p. 2, 692 So. 2d at 321.

⁸ *See id.*

⁹ *See id.*

¹⁰ *Manuel v. State*, 95-2156 (La. 8/24/95), 695 So.2d 953.

Life Protection Act, to create consistency between our criminal and civil code on abortion. Legislators took great care to define terms and exceptions to make Louisiana's laws abundantly clear. Again, reflecting the will of the People who elected the Legislators, the statute explicitly stated that it was to take effect when *Roe v. Wade* was overturned. On June 24, 2022, the United States Supreme Court overturned *Roe v. Wade*, returning to states the ability to protect the lives of our unborn citizens.¹¹ At that time Louisiana's laws protecting the unborn went into immediate effect.

The danger of judicial usurpation of legislative power can be found in the very decision which "triggered" the laws challenged by the Plaintiffs. In Justice Alito's majority decision in *Dobbs*, we find reference to Justice White's dissent in *Roe v. Wade*:

Rather, wielding nothing but "raw judicial power," *Roe*, 410 U.S. at 222, 93 S.Ct. 762 (White, J., dissenting), the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State's interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*.

This bears repeating. The issue of the protection of fetal life is "a question of profound moral and social importance *that the Constitution unequivocally leaves for the people.*" (emphasis supplied) Any result in this case other than denial of the Plaintiffs' application for a writ from this Court is a profound usurpation of the right of the People of the State of Louisiana to decide this issue, which they have done through their elected representatives, your *amici*.¹² Here, In this case, something much greater is at stake because of the delay in the review of the injunction. The State's interest in this case is thus extraordinarily and singularly compelling.

IV. CONCLUSION

The Petition for Suspensive Appeal was properly and timely filed within the suspensive appeal delays following the issuance of the Judgment in accordance with Louisiana Code of Civil Procedure article 2123, and the statute granting the right to a suspensive appeal in this situation

¹¹ *Dobbs v. Jackson Women's Health*, 142 S.Ct. 2228 (2022).

¹² The Amici includes 78 Legislators; 18 Senators and 60 Representatives.

could not be clearer. The *Amici* respectfully requests that the statutes of this State, including the provision permitting suspensive appeals in this situation, be followed and the suspensive appeal allowed, the writ sought by Plaintiffs denied.

Respectfully submitted,

LANGLEY & PARKS, LLC

/s/Glenn L. Langley

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CERTIFICATE OF SERVICE

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/s/ Glenn L. Langley
GLENN L. LANGLEY

ORDER

THE FOREGOING MOTION CONSIDERED:

IT IS ORDERED that the Motion Of Certain Louisiana Legislators For Leave to Appear as Amicus Curiae in Support of Defendant-Applicant Jeff Landry in the above titled proceeding is hereby GRANTED and, accordingly, the Amicus Curiae Brief in Support of Defendant-Applicant Jeff Landry may be filed.

ORDERED AND SIGNED in New Orleans, Louisiana on this ____ day of August, 2022.

Exhibit "A"

Amicus Brief: Legislator List

1. Representative Beryl Amedee, District 51
2. Representative Tony Bacala, District 59
3. Representative Larry Bagley, District 7
4. Representative Gerald "Beau" Beaulieu, IV, District 48
5. Representative Ryan Bourriaque, District 47
6. Representative Rhonda Butler, District 38
7. Representative Dewith Carrier, District 32
8. Representative Mack Cormier, District 105
9. Representative Jean-Paul Coussan, District 45
10. Representative Raymond Crews, District 8
11. Representative Phillip DeVillier, District 41
12. Representative Michael Echols, District 14
13. Representative Rick Edmonds, District 66
14. Representative Kathy Edmonston, District 88
15. Representative Julie Emerson, District 39
16. Representative Les Farnum, District 33
17. Representative Michael "Gabe" Firment, District 22
18. Representative Bryan Fontenot, District 55
19. Representative Larry Frieman, District 74
20. Representative Foy Gadberry, District 15
21. Representative Raymond Garofalo, District 103
22. Representative Brett Geymann, District 35
23. Representative Jonathan Goudeau, District 31
24. Representative Lance Harris, District 25
25. Representative Valarie Hodges, District 64
26. Representative Paul Hollis, District 104
27. Representative Dodie Horton, District 9
28. Representative Mike Huval, District 46
29. Representative John Illg, Jr., District 78
30. Representative Barry Ivey, District 65
31. Representative Mike Johnson, District 27
32. Representative Timothy Kerner, District 84
33. Representative Sherman Mack, District 95
34. Representative Danny McCormick, District 1
35. Representative Jack McFarland, District 13
36. Representative Scott McKnight, District 68
37. Representative Wayne McMahan, District 10
38. Representative Blake Miguez, District 49
39. Representative Buddy Mincey, District 71
40. Representative Nicholas Muscarello, District 86
41. Representative Richard Nelson, District 89
42. Representative Joseph Orgeron, District 54
43. Representative Charles Owen, District 30
44. Representative Thomas Pressly, District 6
45. Representative Neil Riser, District 20
46. Representative Troy Romero, District 37
47. Representative Rodney Schamerhorn, District 24
48. Representative Clay Schexnayder, District 81
49. Representative Laurie Schlegel, District 82
50. Representative Alan Seabaugh, District 5
51. Representative Vincent "Vinney" St. Blanc, District 50
52. Representative John Stefanski, District 42
53. Representative Phillip Tarver, District 36
54. Representative Polly Thomas, District 80
55. Representative Francis Thompson, District 19
56. Representative Chris Turner, District 12
57. Representative Debbie Villio, District 79
58. Representative William "Bill" Wheat, Jr., District 73
59. Representative Malinda White, District 75
60. Representative Mark Wright, District 77
61. Representative Jerome "Zee" Zeringue, District 52

62. Senator Mark Abraham, District 25
63. Senator R.L. Bret Allain, District 21
64. Senator Stewart Cathey, Jr., District 33
65. Senator Heather Cloud, District 28
66. Senator Michael "Big Mike" Fesi, District 20
67. Senator Bob Hensgens, District 26
68. Senator Sharon Hewitt, District 1
69. Senator Katrina Jackson, District 34
70. Senator Patrick McMath, District 11
71. Senator Barry S. Milligan, District 38
72. Senator Robert Mills, District 36
73. Senator Beth Mizell, District 12
74. Senator John "Jay" Morris, District 35
75. Senator Barrow Peacock, District 37
76. Senator J. Rogers Pope, District 13
77. Senator Mike Reese, District 30
78. Senator Jeremy Stine, District 27
79. Senator Glen Womack, District 32