UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

MOTION TO INTERVENE AND TO OPPOSE PLAINTIFFS' MOTION TO MAINTAIN DOCUMENTS UNDER SEAL

Pursuant to Federal Rule of Civil Procedure 24, Movant-Intervenors hereby moves for the Court to grant their intervention in this case for the limited purpose of opposing Plaintiffs' motion to maintain documents under seal. If intervention is granted, Movant-Intervenors herby move for the Court to deny Plaintiffs' motion to maintain documents under seal. The grounds for Movant-Intervenors' motion for intervention and opposition are based on the accompanying memorandum of law, the accompanying declarations, documents of record, any argument of counsel, and such other evidence as the Court may properly consider.

Defendant has represented through council that it consents to this intervention. Plaintiffs have represented through council that they do not consent to this intervention.

Dated: September 25, 2020 Respectfully submitted,

*/s/ Glenn L. Langley**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document and accompanying filings have been served on all counsel of record to this proceeding on the 25th day of September, 2020 by this Court's CM/ECF Filing System.

Dated: September 25, 2020

Respectfully submitted,

*/s/ Glenn L. Langley**

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MOVANT-INTERVENORS MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND TO OPPOSE PLAINTIFFS' MOTION TO MAINTAIN DOCUMENTS UNDER SEAL

The Movant-Intervenors are journalists and other members of the media, legal academics, and Louisiana legislators (collectively the "Applicants") seeking to intervene in this case for the limited purpose of opposing Plaintiffs' motion to maintain documents under seal.

Journalist and Other Members of the Media intervenors are the Daily Caller Foundation, a news publication in Washington, D.C.; Dan Fagan, a columnist in Covington, Louisiana, Mollie Hemingway, a senior editor at The Federalist in Washington, D.C.; and Willis Krumholz, a writer in Minneapolis, Minnesota for The Federalist and Alpha News.

Louisiana Legislators intervenors are Patrick Page Cortez, Louisiana State Senator and Senate President; Beth Mizell, Louisiana State Senator and Senate President Pro Tempore; Tanner MaGee, Louisiana State Representative and Speaker Pro Tempore of the House of

Representatives; Beryl Amedee, Louisiana State Representative; Rick Edmonds, Louisiana State Representative; Lance Harris, Louisiana State Representative; and Mark Wright, Louisiana State Representative.

Legal Academics intervenors are Erika Bachiochi legal scholar and a fellow at the Ethics and Public Policy Center in Washington, D.C.; Ligia Castaldi, legal scholar and professor of law at Ave Maria School of Law in Naples, Florida; Lynne Marie Kohm, legal scholar and professor of law at Regent University School of Law in Virginia Beach, Virginia; and Teresa Stanton Collett, legal scholar and law professor at the University of St. Thomas School of Law in Minneapolis, Minnesota.

Applicants seek access to the court records in this landmark case. This case turned on specific facts and whether an undue burden for women seeking abortion was created by Louisiana Act 620, which imposed certain admitting privilege requirements on abortion providers. After a fact-intensive inquiry, based on court records developed in the district court, the Supreme Court held the law imposed an undue burden and thus was unconstitutional. The record in this case will shed invaluable light on how that decision was arrived at.

The merits proceedings in this case have been broadly sealed and Plaintiffs are moving to maintain these documents under seal following final disposition of this action. Applicants require access to the records that Plaintiffs moved the court to seal. These records are needed for a variety of reasons, including to write and publish news stories and law review articles analyzing the Supreme Court's decision, as well as to pass new laws that do not create an undue burden.[1]

[1] In each court's opinion the evidence was summarized, but this case was highly factual and the district court, the Fifth Circuit, and the Supreme Court all had different views on whether good faith attempt to obtain admitting privileges. *See, e.g.*, *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2160 (2020) (Thomas, J., dissenting). In order to inform the public, understand the Supreme Court's holding, craft new laws, and assess whether the Louisiana Attorney General adequately developed evidence and arguments, the Applicants require access to the full court record.

Plaintiffs' motion, if granted, would conceal these court records from the Applicants—and the public at large—in spite of their common law and First Amendment rights to view the documents. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."). Plaintiffs' motion relies on a stipulated protective order to establish a basis for sealing these court records, but that is not the law. Plaintiffs' argument conflates their burden for ensuring confidentiality of discovery disclosures under a protective order and their burden for sealing court records from the public under an order to seal.[2]

Regarding access to court records, "[t]he default is public access." *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 210 (5th Cir. 2019). Federal Rule of Civil Procedure 26(c) allows for some protection of materials (which may or may not become court records) exchanged during discovery. A party must show, and the court must articulate, only a "good cause" for protecting such documents. *See* 8 Charles Wright, Arthur Miller, and Richard Marcus, Federal Practice and Procedure, § 2035, at 483–86 (2d ed.1994) ("The courts have insisted on a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements, in order to establish good cause.").

Documents that become court records are subject to a higher standard. To seal court records, the party has the burden of showing, and the court the obligation to balance and articulate with specificity, the justifications for sealing that overcome the long-standing and widely-recognized presumption of access to court records. *See* 10A Federal Procedure, Lawyers Edition § 26:351 (June 2020 update) ("The party seeking the sealing of part of a judicial record, i.e.,

[2] The Fifth Circuit, in an order in a related case, has already cast significant doubt about the validity of a similar protective order and those doubts are only magnified by the Plaintiffs' motion to maintain documents under seal after the final disposition of the case. *See* Order at 3, *In re Gee*, No. 19-30953 (5th Cir. Nov. 27, 2019) (Elrod, J., concurring) ("The district court's protective order is remarkably overbroad.").

seeking to rebut the common-law presumption of public access to judicial records, bears the burden of showing that the material in question constitutes the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party.").

Louisiana Act 620 was found unconstitutional because it created an undue burden on women seeking abortions. The very nature of this test turns on highly factual determinations regarding access to abortion providers. In this case, honorable, well-learned jurists at all court levels viewed the same record and came to different conclusions. *Compare June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2126 (2020) (holding that regarding Doe 2 "[t]he District Court's finding of good faith is plainly permissible on the record before us"); with *id.* at 2163 (Alito, J., dissenting) (questioning whether a good-faith effort was made to obtain admitting privileges because "Doe 2 all but admitted in his e-mails that his efforts to obtain privileges were perfunctory" and that "[t]he District Court should have considered whether Doe 2's efforts were consistent with the conduct of a person who really wanted to get privileges"), *with June Med. Servs. L.L.C. v. Gee*, 905 F.3d 787, 811 (5th Cir. 2018) (holding that "there was clear evidence in the record before the district court that various doctors failed to seek admitting privileges in good faith"); *with June Med. Servs. LLC v. Kliebert*, 250 F. Supp. 3d 27, 78 (M.D. La. 2017) (concluding that "notwithstanding the good faith efforts of Does 1, 2, 4, 5 and 6 to comply with the Act by getting active admitting privileges at a hospital within 30 miles of where they perform abortions, they have had very limited success for reasons related to Act 620 and not related to their competence"). As illustrated by this disagreement over whether the Does acted in "good faith," in order for the Applicants' to achieve their stated purposes, access to the entire district court record is essential.

As Chief Justice Roberts acknowledges, the "validity of the admitting privileges laws 'depend[s] on numerous factors that may differ from state to state.' " *June Med. Servs. L. L. C. v.*

Russo, 140 S. Ct. 2103, 2141 n.6 (2020). Whether Louisiana or any other state desires to pass an admitting privileges law, or if academics and the media want to adequately report on the decision, full access to the district court record is required. This Court should vindicate the Applicants' right to access court records and deny Plaintiffs' motion to maintain documents under seal.

I. APPLICANTS SHOULD BE ALLOWED TO INTERVENE FOR THE LIMITED PURPOSE OF OPPOSING PLAINTIFFS' MOTION.

Applicants should be allowed to intervene as a matter of right under Fed. R. Civ. P. 24(a), and if not as a matter of right, then as a permissive intervention, pursuant to Fed. R. Civ. P. 24(b).

Regarding intervention as a right, "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."[3] Fed. R. Civ. P. 24(a).

To intervene as a matter of right, applicants must demonstrate that "(1) it timely applied; (2) it has an interest relating to the property or transaction that is the subject of the case; (3) disposition of the case may practically impair or impede its ability to protect its interest; and (4) it

[3] The Fifth Circuit has held that "in the absence of a live controversy in a pending case, an intervenor would need standing to intervene," *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006), but that in a pending case, "there is no Article III requirement that intervenors have standing." *Id.* In the present case, the Plaintiffs' are seeking attorney's fees and thus since the case is still pending, standing is not an issue. That said, the Applicants have the requisite Article III standing. Applicant Journalists and Other Members of the Media and Applicant Academics would write and publish articles to be read by their respective audiences regarding the facts of the case, but cannot do so without viewing the record. *See* Ex. B Bachiochi, Castaldi, Collett, Daily Caller Foundation, Fagan, Hemingway, Krummholz, and Kohm Decls. Likewise, Applicant Legislators could hold hearings and craft new laws in accordance with the requirements of the *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020), decision if they were fully aware of all of the facts of the case. *See* Ex. B Cortez, Harris, Mizell, and Wright Decls. These injuries would be redressed if this Court denied the Plaintiffs' motion to maintain documents under seal and allowed the Applicants access to the court records.

But, even absent Article III standing, the Court could use its inherent "supervisory power over its own records and files" to unseal documents. *Macias v. Aaron Rents, Inc.*, 288 F. App'x 913, 915 (5th Cir. 2008) (unpublished) (quoting *Nixon v. Warner Commc's, Inc.*, 435 U.S. 589, 598 (1978)). Thus, the Court can address the Applicants motion to seek intervention and unseal record documents regardless of Article III standing.

is inadequately represented by the existing parties." *Adam Joseph Res. v. CNA Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019) (citing Fed. R. Civ. P. 24(a); *Sierra Club v. Espy*, 18 F.3d 1202, 1204–05 (5th Cir. 1994)). The rule "is to be liberally construed," with "doubts resolved in favor of the proposed intervenor." *In re Lease Oil Antitrust Litig.*, 570 F.3d 244, 248 (5th Cir. 2009).

Regarding permissive intervention, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." *Newby v. Enron Corp.*, 443 F.3d 416, 421 (5th Cir. 2006); Fed. R. Civ. P. 24(b)(1).

A. The Court should grant intervention as a right.

1. The motion is timely.

Timeliness to intervene is assessed based on four factors: (1) the length of time applicants knew or should have known of their interest in the case; (2) prejudice to existing parties caused by applicants' delay; (3) prejudice to applicants if their motion is denied; and (4) any unusual circumstances. *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 433 (5th Cir. 2011).

Regarding the first factor, the Applicants acted as soon as reasonably possible. The Applicants became aware of Plaintiffs' September 4, 2020, motion to maintain documents under seal on September 10, 2020, and filed the motion to intervene simultaneously with a motion to deny Plaintiffs' motion on September 25, 2020—within the twenty-one days required for the Defendant to respond to the motion. Ex. B Collett Decl. Thus, the Applicants sought to intervene as soon as practical after becoming aware that Plaintiffs intended to prevent the public from accessing record documents related to this case. *See id.* at 434 (finding that four weeks to "obtain counsel, explore his legal options, and file a motion to intervene" was a "fairly short period of time"); *see also Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001) (twenty-two days

was timely)); *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (en banc) (thirty-seven and forty-seven days were timely); *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977) (concluding generally that "[b]y filing their petition less than one month after learning of their interest in this case, the appellants discharged their duty to act quickly.").

The second and third timeliness factors balance substantially in favor of the Applicants. Plaintiffs were not prejudiced by the time it took for the Applicants to intervene because the Applicants filed their motion opposing Plaintiffs' motion within the same twenty-one-day time period allowed for the Defendant to respond to Plaintiffs' motion. *See Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001) ("[T]he relevant prejudice is that created by the intervenor's delay in seeking to intervene after it learns of its interest, not prejudice to existing parties if intervention is allowed."). To the contrary, the prejudice to the Applicants would be great because intervention is the proper method for a nonparty to challenge an order to seal or a protective order. *See, e.g., Newby*, 443 F.3d at 424 (explaining that "nonparties to a case routinely access documents and records under a protective order or under seal in a civil case" through intervention).

Finally, regarding the unusual circumstances factor, on November 6, 2014, the Defendant stipulated to a protective order. Prot. Order, ECF No. 59. Since then, the Defendant moved the Court on September 8, 2020, to clarify the scope of the protective order and to potentially modify the order. Def.'s Mot. to Clarify Prot. Order Obligations or, Alternatively, to Preserve Docs., ECF No. 347. Plaintiffs on September 4, 2020, moved the court to maintain documents under seal following final disposition of the case. Pls.' Mot. Maintain Docs. Under Seal, ECF No. 344. Because of the uncertain and changing positions of the Defendant, along with Plaintiffs' expansive request to seal documents contrary to access under the common law and the First Amendment, unusual circumstances are present and balance in favor of the Applicants' timely intervention.

The motion to intervene is therefore timely.

2. Applicants Have A Substantial Interest to the Record Documents of this Case.

For intervention as a right, Rule 24 requires the party seeking intervention to have an interest relating to the property or transaction that is the subject of a case, which is "direct, substantial, [and] legally protectable interest in the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene." *John Doe No. 1 v. Glickman*, 256 F.3d 371, 379 (5th Cir. 2001) (citations omitted) (internal quotation marks omitted). "[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (citations omitted) (internal quotation marks omitted).

As briefed below in the Applicant's argument opposing Plaintiffs' motion, the Applicants have a substantial interest in the facts of the case, an interest that is supported by the general presumption of access to court records emanating from common law and the First Amendment. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.").

The record in this case is particularly important given its significant impact on abortion jurisprudence and the ability for states to pass abortion regulations. A full record of this case is essential to the Applicants because the constitutionality of Louisiana Act 620 was decided in part based on whether it created an undue burden for women seeking abortion, which assess the benefits and burdens of the law—an inherently fact intensive inquiry. *See June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2132 (2020) (concluding "in light of the record, that the District Court's significant factual findings—both as to burdens and as to benefits—have ample evidentiary

support" and that "[g]iven the facts found, [the Supreme Court] must also uphold the District Court's related factual and legal determinations"). The sealed record documents contain the facts that directly led to and were imbued in the Supreme Court's holding that Louisiana's law created a substantial obstacle to women seeking an abortion; its determination that the law offers no significant health-related benefits; and its determination that the law consequently imposes an undue burden on a woman's constitutional right to choose to have an abortion.

The Applicants Journalists and Other Members of the Media and Applicant Academics often write on the issue of abortion. Ex. B Bachiochi, Castaldi, Collett, Daily Caller Foundation, Fagan, Hemingway, Krummholz, and Kohm Decls. The Academics publish law review articles analyzing court opinions to aid lawyers, judges, and other parties in advancing the law. *Id.* The Journalists and Other Members of the Media write articles to inform the public of important issues and serve as a vital check for holding public officials accountable. Ex. B Daily Caller Foundation, Fagan, Hemingway, and Krummholz Decls.; *cf.* Bruce Brown & Selina MacLaren, *Holding the Presidency Accountable: A Path Forward for Journalists and Lawyers*, 12 Harv. L. & Pol'y Rev. 89, 90 (2018).

In addition, Applicant Legislators have an interest in understanding why a duly passed law was later found unconstitutional. Again, this case turned on specific facts such as the testimony of doctors regarding the ability to obtain admitting privileges at particular hospitals. *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2125 (2020). In order for Louisiana legislators to perform their function and pass a new law, as well as understand what is happening in its state's abortion clinics, they must know the facts that were relevant to the Supreme Court's fact intensive determination that led to its conclusion that the law created an undue burden. *See* Ex. B Cortez, Harris, Mizell, and Wright Decls. If these records remain sealed, Legislators will be forced to

blindly craft legislation and hope that subsequent laws do not contain the same fact-intensive defects as were present in Act 620. The legislative branch is a deliberative body that when crafting new laws weighs various viewpoints and facts and balances competing policy interests. The Applicant Legislators have a direct interest in accessing the record documents of this case because it was those records that led the Supreme Court to hold that the Act passed by the Louisiana Legislature was unconstitutional.

Thus, the Applicants have a substantial interest in intervening for the limited purposes of ensuring the record remains unsealed and available to them.

3. A Ruling for the Plaintiff Would Impede the Applicants' Ability to Protect Their Interests.

A ruling for in favor of Plaintiffs' motion would exhaust the Applicants' ability to protect their interests in the records of the case. If Plaintiffs' motion is granted, the record will be sealed and critical information relevant to the Supreme Court's decision regarding whether an undue burden existed will be censored from the Applicants and the public. This censor will prevent lawyers, jurists, journalists, lawmakers, and members of the public from being able to understand the Supreme Court's reasoning, and its impact on both current and future laws. There is no other means to obtain the information obtained in the sealed records and thus without intervention, if Plaintiffs' motion is granted there is no other means to protect the Applicants' interests.

4. The Parties Do Not Adequately Represent the Interests of the Applicants.

"The applicant has the burden of demonstrating inadequate representation, but this burden is minimal." *Brumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014) (citations omitted) (internal quotation marks omitted). "The burden on the movant is not a substantial one. The movant need not show that the representation by existing parties will be, for certain, inadequate . . . . [T]he applicant's burden on this matter should be viewed as minimal." *Id.* To satisfy this minimal

requirement, the Applicants must overcome, if applicable, two presumptions of adequate representation. If all applicable presumptions are dispelled, then the court will "revert to the de minimis standard of proof required . . . to establish inadequate representation." *Edwards v. City of Houston*, 78 F.3d 983, 1006 (5th Cir. 1996).

The first presumption is that when a government entity is acting in its sovereign capacity that it is presumed to adequately represent the interests of the applicant. *Texas v. United States*, 805 F.3d 653, 661 (5th Cir. 2015). This presumption can be overcome if the applicant seeking intervention demonstrates "that its interest is in fact different from that of the [governmental entity] and that the interest will not be represented by [it]." *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (citations omitted) (internal quotation marks omitted). Here, the interests of the Applicants and the Defendant diverge. The Defendant's opposition to Plaintiffs' motion seeks to clarify its obligations under the stipulated protective order as well as potentially modify the protective order. The Defendant seeks clarity, in part, to ensure compliance with the Louisiana Public Records Law. Def.'s Mot. to Clarify Prot. Order Obligations or, Alternatively, to Preserve Docs, ECF No. 347-1.

The Defendant's interests are not the same as the Applicant Academics and Journalists and Other Members of the Media who have an interest to access and republish portions of the record for purposes of informing the public through their writings. Nor are the Defendant's interests the same as the Applicant Legislators, who seek to hold hearings and have public deliberations on why the Louisiana Legislature passed a law that was subsequently deemed unconstitutional and how it might pass a similar, but constitutional, law under the Supreme Court's holding in this case. Further, the Applicant Legislators have an interest in understanding what is happening in Louisiana's abortion clinics and if there are crimes happening in those clinics. There is evidence

in a related case that crimes may have been committed at Louisiana abortion clinics, but because the pertinent court records are sealed the Applicants and the public are left unable to hold elected officials accountable for regulation and oversight of the providers. Judge Elrod's opinion in a related case highlights the type of evidence that Applicant's seek:

> According to Louisiana, in one incident, Doe 2 may have failed to report the forcible rape of a fourteen-year-old girl. *Cf.* La. Stat. Ann. § 14:403 (requiring mandatory reporters to report sexual abuse of a minor). In another, Louisiana proffers that Doe 2 may have knowingly performed an abortion on a minor without parental consent or judicial bypass. *Cf.* La. Stat. Ann. § 40:1061.14. Louisiana also contends that Doe 2 may also have failed to maintain medical records, in violation of state law. *Cf.* La. Stat. Ann. § 40:1061.19.

See Order at 6–7, *In re Gee*, No. 19-30953 (5th Cir. Nov. 27, 2019).

The Defendant have also not adequately represented the interest of the Applicants during litigation. The Defendant stipulated to a broad protective order that resulted in much of the court record being sealed. Joint Mot. for Prot. Order, ECF No. 58. Further, at trial the Defendant failed to object to applying the protective order to all exhibits introduced such that they will "not be shown to the public." Tr. Bench Trial 11, ECF No. 190.

The Applicants oppose sealing of the record documents for the particular purposes stated above, whereas the Defendant opposes sealing for purpose of complying with the Louisiana Public Records Law and for a generalized purpose of the public good. *See Texas v. United States*, 805 F.3d 653, 663 (5th Cir. 2015) (discussing the difference between divergent interests and merely broader interests). Thus, the Defendant cannot be presumed to adequately represent Applicants' interests because the Defendant does not have an interest in exercising its common law and First Amendment rights to publish writings pertaining to the underlying case, or the same interest in the deliberative legislative process. The Applicants have no interest in unsealing for the purpose of complying with Louisiana Public Records Law. *See California ex rel. Lockyer v. United States*,

450 F.3d 436, 445 (9th Cir. 2006) (holding that the intervenors overcame the presumption that the government will act in their interest because the intervenors have "more narrow, parochial interests" than the government) (quoting *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) (holding that the government might not adequately represent the interests of the intervenor because the government had a "broader view" than the more "narrow, parochial interests" of the intervenor)).

"The second presumption of adequate representation arises when the would-be intervenor has the same ultimate objective as a party to the lawsuit. In such cases, the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption." *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996). As mentioned above, it is not certain that the Applicants and the Defendant have the same ultimate objectives because the Defendant is concerned with compliance with the Louisiana Public Records Law, whereas the Applicants are concerned with publishing and disseminating information about the case as well as deliberating on the now unconstitutional law in the context of passing a new constitutional law. The Applicants advance arguments to oppose Plaintiffs' motion based on the common law and First Amendment right to access judicial records. The Defendant's arguments, in part, are based on application of Louisiana statutory law and its effect on a stipulation agreement entered into between the Defendant and Plaintiffs. Even if there is some overlap in objectives, the Fifth Circuit has held that "[t]he lack of unity in *all* objectives, combined with real and legitimate additional or contrary arguments, is sufficient to demonstrate that the representation may be inadequate, so this requirement of Rule 24(a) is met." *Texas v. United States*, 805 F.3d 653, 662 (5th Cir. 2015) (quoting *Brumfield v. Dodd*, 749 F.3d 339, 346 (5th Cir. 2014)) (emphasis added). Here, because the adverse interests are based on divergent

goals, the Defendant *might* not adequately represent the interests of the Applicants, which is all that is required by Rule 24.

Thus, the Applicants meet all the requirements to intervene as a matter of right and should be granted intervention for the limited purpose of opposing Plaintiffs' motion to maintain documents under seal.

B. In the Alternative, the Court Should Grant Permissive Intervention.

If this Court does not grant the Applicants intervention as a matter of right, it should grant permissive intervention because the Applicants' position and this suit have a common question of law or fact. *See* Fed. R. Civ. P. 24(b)(1) ("On timely motion, the court may permit anyone to intervene who . . . (B) has a claim or defense that share with the main action a common question of law or fact."). For the reasons described above, the motion to intervene is timely. In mutual opposition to Plaintiffs' motion to maintain documents under seal, the Applicants' claim of a right of access to record documents and the Defendant's motion to clarify and potentially modify the protective order both relate to a common question of law—whether records should remain sealed after final disposition of the case. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994) (stating that the "procedural device of permissive intervention is appropriately used to enable a litigant who was not an original party to an action to challenge protective or confidentiality orders entered in that action") (citing cases collected from various circuits).

Granting intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." *See* Fed. R. Civ. P. 24(b)(3). The underlying merits of the case have been litigated and Plaintiffs obtained the relief they sought. Thus, relief will not be delayed by Applicants' intervention. Further, permitting intervention will not prejudice Plaintiffs as intervention is the standard method for seeking documents under seal and thus could be anticipated

in this type of litigation of this. *See Newby v. Enron Corp.*, 443 F.3d 416, 424 (5th Cir. 2006) ("Nonparties to a case routinely access documents and records under a protective order or under seal in a civil case through motions for permissive intervention under Rule 24(b)(2)."). Further Plaintiffs were aware that the particular issue related to the validity of the proactive order may be at issue. Plaintiffs and the Defendant are parties in a related case, *June Medical Services LLC v. Gee (June II)*, No. 3:16-cv-444. The protective order in *June II* is nearly identical to the order in this case. *Compare* Prot. Order, ECF No. 59, *with* Ex. A (Prot. Order, *June Med. Servs., LLC v. Gee*, No. 3:16-cv-444 (M.D. La. Feb. 22, 2018), ECF No. 96). The Defendant's in this case sought a writ of mandamus to unseal documents in *June II* for the limited purpose of filing it with the Supreme Court, but were denied the writ because there was an adequate remedy at law. *See* Order at 1, *In re Gee*, No. 19-30953 (5th Cir. Nov. 27, 2019). Notably, Judge Elrod in a concurring opinion remarked that "[t]he district court's protective order is remarkably overbroad," and that the district court failed to "note the presumption of public access to this information," which is "significant in this case because it goes to one of the most vital public interests— public health." *Id.* at 3 (Elrod, J., concurring). As such, Plaintiffs have been aware since Nov. 27, 2019, that their nearly identical protective order in this case may become at issue. As such, they cannot now claim that permissive intervention to challenge their recently filed motion to maintain document under seal after the case is disposed would prejudice them.

For the foregoing reasons the Court should allow the Applicants to intervene to oppose Plaintiffs' motion to maintain document under seal after the case is disposed.

II. THE COURT SHOULD DENY THE PLAINTIFFS' MOTION TO MAINTAIN DOCUMENTS UNDER SEAL AFTER THE CASE IS DISPOSED.

Plaintiffs' motion to maintain documents under seal is an extraordinary request that raises several concerns, including that the public's common law and First Amendment rights to access

judicial records would be violated. The Applicants, for the purposes outlined above, are seeking access to the records Plaintiffs seek to seal. The constitutionality of Louisiana Act 620 turned on the specific facts developed through litigation, facts that lead the Supreme Court to hold that the law created an undue burden. *See id.* at 2132. As stated above, the Applicant Journalists and Other Members of the Media and Applicant Academics seek to publish in-depth stories and law review articles on the Supreme Court's basis for its holding in *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). Likewise, Applicant Legislators desire to craft new abortion legislation and thus need access to the underling record in order to avoid creating an undue burden with any new legislation. Given the sweeping breadth of Plaintiff's motion to seal, if granted the Applicants would be blocked for meaningful reporting and analysis of the issues of the case. The Court should deny Plaintiffs' broad motion to maintain document under seal.

A. The Court Should Not Maintain the Seal Because the Public Has A Presumptive Right to the Record Documents.

The Fifth Circuit recognizes the common law right of access to judicial records. *See S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993) ("In exercising its discretion to seal judicial records, the court must balance the public's common law right of access against the interests favoring nondisclosure."); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) (recognizing a common law right of access to records of judicial proceedings which predates the Constitution). This common law right creates a presumption of public access to judicial records. *See Van Waeyenberghe*, 990 F.2d at 848; *see also Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011) ("A party seeking to file court records under seal must overcome a presumption, long supported by courts, that the public has a common-law right of access to judicial records."). This right "promotes the trustworthiness of the judicial process, curbs judicial abuses, and provides the public with a better understanding

of the judicial process, including its fairness[, and] serves as a check on the integrity of the system." *United States v. Sealed Search Warrants*, 868 F.3d 385, 395 (5th Cir. 2017) (citation omitted) (internal quotation marks omitted).

In addition to a common law right of access, the Applicants have a right of access to the documents records under the First Amendment. *See Virginia Dept. of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004) ("The right to public access to documents or materials filed in district court derive from two independent sources: the common law and the First Amendment."); *see also Courthouse News Serv. v. Planet*, 947 F.3d 581, 590 (9th Cir. 2020) (concluding that "every circuit to consider the issue [of First Amendment right of access] has uniformly concluded that the right [to access court records] applies to both civil and criminal proceedings") (collecting cases).

Thus, the Applicants have a First Amendment and a common law right of access to judicial records and for the following reasons the Court should deny Plaintiffs' motion to maintain seal on the requested documents.

B. Plaintiffs' Motion Does Not Provide A Compelling Reason for Its Remarkably Overbroad Sealing Request.

"Although the common law right of access to judicial records is not absolute, 'the district court's discretion to seal the record of judicial proceedings is to be exercised charily.' " *Van Waeyenberghe*, 990 F.2d at 848 (quoting *Fed. Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987)). A district court's decision whether to seal part of the record must be made in light of the "strong presumption that all trial proceedings should be subject to scrutiny by the public." *United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (quoting *United States v. Ladd*, 218 F.3d 701, 704 (7th Cir. 2000)); *but see United States v. Sealed Search Warrants*, 868 F.3d 385, 393–94 (5th Cir. 2017) ("[T]he Fifth Circuit has not assigned a

particular weight to the presumption in favor of access, unlike some other circuits which have characterized it as "strong" or others which reduce it to "one of the interests to be weighed.").

The Fifth Circuit has not defined the exact contours of the presumption of access to judicial records, except that it is a case-by-case analysis. *United States v. Sealed Search Warrants*, 868 F.3d 385, 396 (5th Cir. 2017) The Fifth Circuit looks to other circuits on similar issues. *In re Grand Jury Proceedings*, 115 F.3d 1240, 1246 (5th Cir. 1997) ("[The Fifth Circuit] ordinarily abides by the decisions of our sister circuits."). Other circuits require a compelling interest by the party seeking to overcome the presumption of access to judicial records. *See, e.g.*, *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) ("A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the 'compelling reasons' standard."). This is a different standard from the good cause standard of Federal Rule of Civil Procedure 26(c). *See In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 924 F.3d 662, 672–73 (3d Cir. 2019) (holding that a protective order is "[a]nalytically distinct from the District Court's ability to protect discovery materials under Rule 26(c)" and requires the court to "articulate the compelling, countervailing interests to be protected, make specific findings on the record concerning the effects of disclosure, and provide an opportunity for interested third parties to be heard"); *see also* Hon. Karen L. Stevenson, "*A Protective Order Doesn't Guarantee Sealing*," ABA: Voices from the Bench (Feb. 01, 2017), https://www.americanbar.org/groups/litigation/publications/litigation-news/practice-points/a-protective-order-doesnt-guarantee-sealing/.[4] *Kamakana* and *Avandia* accord with the Fifth

[4] A court may seal records only when it finds "a compelling reason and articulate[s] the factual basis for its ruling, without relying on hypothesis or conjecture." *Kamakana*, 447 F.3d at 1179 (citation omitted) (internal quotation marks omitted). "The court must then conscientiously balance the competing interests of the public and the party who seeks to keep certain judicial records secret." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096–97 (9th Cir. 2016) (citations omitted) (internal quotation marks omitted). What is considered a "compelling reason" is "best left to the sound discretion of the trial court." *Id.* (quoting *Nixon*, 435 U.S. at 599).

Circuit in *Vantage Health Plan*, which held that a district court abuses its discretion in decisions to seal or unseal documents when it (1) fails to identify and apply the proper legal standards, or (2) fails to provide sufficient reasons for its decision to enable appellate review. *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450–51 (5th Cir. 2019) (citing *Sealed Search Warrants*, 868 F.3d at 396–98; *Van Waeyenberghe*, 990 F.2d at 848–49).[5]

Plaintiffs make no showing under this standard, or any standard, but rather rely on this Court's previous decisions to grant Rule 26(c) protective orders. As discussed above, the decision to issue a protective order is separate from the decision to seal documents after the conclusion of the case.

The record documents proposed to be sealed are of vital importance to the Applicants. In this case this Court, the Fifth Circuit, and the Supreme Court all viewed the same facts yet came to different conclusions. This is because, in part, the undue burden standard that potentially renders an abortion law unconstitutional is a fact-specific standard. Without these documents, the Applicant Journalists and Other Members of the Media and Applicant Academics will be constrained in their ability to write and publish on the Supreme Court's holding because they will be limited to a sanitized record that reveals only what Plaintiffs want the public to see. Plaintiffs, in seeking to have judicial records sealed, have the burden of overcoming the presumption of access to those judicial records; and this Court in deciding whether to seal or unseal, must balance this presumption and explain its reasoning. *See United States v. Sealed Search Warrants*, 868 F.3d 385, 395 (5th Cir. 2017) ("[T]he Fifth Circuit has consistently required the district court to explain its decisions to seal or unseal.").

[5] The Fifth Circuit recently reiterated that the presumption in favor of public access to judicial records remains and is "one of the interests to be weighed on the [public's] 'side of the scales.' " *Bradley ex. rel. AJW v. Ackal*, 954 F.3d 216, 225 n.5 (5th Cir. 2020) (citations omitted). "The relevant facts and circumstances of the particular case inform the factors that a court weighs on both sides." *Id.* at 225 (citations omitted) (internal quotation marks omitted).

Ultimately, the burden to overcome the presumption of access to court records is on the party that wishes to seal—"[t]he default is public access." *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 210 (5th Cir. 2019). Plaintiffs' bare bones motion relying exclusively on a stipulated Rule 26 protective order has not carried this burden and this Court should deny Plaintiffs' request to maintain seal of the record documents.

C. Plaintiffs Have Not Shown Good Cause for Its Remarkably Overbroad Sealing Request.

Even if the same standard applies for Rule 26 protective orders as for orders to seal judicial records, "Rule 26(c)'s requirement of a showing of good cause to support the issuance of a protective order indicates that '[t]he burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.' " *In re Terra Int'l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir.1978)); *see Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (requiring particularized document-by-document showing stating that a "party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted."); *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) ("Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.") (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir.1986)); *see also Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) (holding that an order that gives "each party carte blanche to decide what portions of the record shall be kept secret . . . is invalid") (collecting cases from various circuits)). Under Rule 26, this Court is required to make detailed findings justifying any sealing orders and

cannot rely on Plaintiffs' bare assertation that because a court record was subject to a stipulated protective order that good cause to maintain seal after disposition of the case exists.

To the extent that this Court does rely on the fact that the documents were under a protective order, there is strong evidence that Plaintiffs' abused the protective order. Judge Elrod in her concurring opinion highlights these potential abuses, characterizing a nearly identical protective order as "remarkably overbroad." *See* Order at 3–11, *In re Gee*, No. 19-30953 (5th Cir. Nov. 27, 2019). Judge Elrod found troubling, *inter alia*, that publicly available documents were sealed, including a *New York Times* article, a *Christian Science Monitor* article that "identified the plaintiff clinic and photographed and named clinic staff," an obituary published in the *Shreveport Times*, as well as a press release issued by the Center for Reproductive Rights. *Id.* at 3–4. Similar to *June II*, the records in this case have been widely sealed, it is unknown if those documents contain newspaper articles or evidence of crimes. Denying Plaintiffs' motion will bring the truth into the light and allow for accountability.

In Plaintiffs' motion, they argue that unsealing would "out" abortion providers identities. But, as the Fifth Circuit stated, several aspects of these identities are already known. *Id.* at 5 n.11. Furthermore, if threats to the safety of abortion providers are the basis for sealing a record document, Plaintiffs must provide specific or particularized threats. Without a showing that these particular abortion providers may receive true threats to their safety as a result of the unsealing of certain documents, their desire to seal should not outweigh the presumption of access to court records. Further, such a showing would not be dispositive on the issue of sealing, but a factor to balance. Again, in a related case—the same one that contained a "remarkably overbroad" protective order that is nearly identical to the order in this case—it is known from court opinions that the identities of the John Does are not unknown. Order at 5 n.11, *In re Gee*, No. 19-30953

(5th Cir. Nov. 27, 2019) ("Nor is the identity of the 'John Does' in this case unknown. Doe 2 acknowledged in his deposition that 'you can find out from the internet that [he provides] abortions' and he has submitted public declarations in past abortion litigation."). Likewise in this case, the Fifth Circuit has acknowledged that "[t]he district court took the unusual step of placing the doctors' names under seal—but, as the record demonstrates, their identities are well known." *June Med. Servs. L.L.C. v. Gee*, 905 F.3d 787, 792 n.4 (5th Cir. 2018), *cert. granted*, 140 S. Ct. 35 (2019), *and cert. granted*, 140 S. Ct. 35 (2019), *and rev'd sub nom. June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). Plaintiffs have not shown good cause as to why publicly known names must remain under seal, or for that matter why any information already in the public domain should be sealed.[6] Plaintiffs elected to make their motion and to proceed without making any showing of a compelling interest or good cause. This was a conscious choice as they have known since at least the *June II* order that they had that burden—yet they consciously chose not to meet it, thus forfeiting their ability to make a showing. Without such a showing, Plaintiffs' argument to maintain seal of the record documents fails.

If the good cause requirement of Rule 26 protective orders applies, the Court must provide sufficient reasons for its decision to seal. Without articulated reasons for the Court's decision, it is not reviewable on appeal and thus deficient. *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450–51 (5th Cir. 2019); *United States v. Sealed Search Warrants*, 868 F.3d 385, 397 (5th Cir. 2017) (stating that "detailed, clear, and specific findings made by a district court in sealing or unsealing an order."). Thus, even if the Court does not deny *in toto* Plaintiffs' motion

[6] *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–95 (1975) ("[T]he interests in privacy fade when the information involved already appears on the public record."); *see also Washington Post v. Robinson*, 935 F.2d 282, 292 (D.C. Cir. 1991) (discussing the effect on disclosure of information already available to the public outside of court records). Thus, if identities of the providers such as Doe 2 are already known, there is no good cause for the Court to shield that from the public.

to seal the specific documents, the Court should provide a document-by-document basis as to why secrecy of the document, in whole or in part, must be maintained and its contents shielded from the Applicants and the public at large.

CONCLUSION

This Court should deny Plaintiffs' motion to maintain documents under seal.

Dated: September 25, 2020

Respectfully submitted,

*/s/ Glenn L. Langley**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF ATTORNEY RYAN WILSON

1. I am an attorney retained by the Movant-Intervenors. I represent Intervenors in connection with the above-captioned matter. I make this declaration in support of Movant-Intervenors' Motion to Intervene and to Oppose Plaintiff's Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. Attached hereto as Exhibit A is a true and accurate copy of the protective order (ECF 96) issued in the Middle District of Louisiana in case number No. 3:16-CV-444-BAJ-RLB.

3. Attached hereto as Exhibit B is a true and accurate copy of declarations made in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiff's Motion to Maintain Documents Under Seal.

4. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Maple Grove, Minnesota on this 25th day of September 2020.

/s/ Ryan Wilson
Ryan Wilson

Exhibit A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, d/b/a HOPE MEDICAL GROUP FOR WOMEN, on behalf of its patients, physicians, and staff, et al.,

Plaintiffs,

v.

REBEKAH GEE, in her official capacity as Secretary of the Louisiana Department of Health, et al.,

Defendants.

Case No. 3:16-CV-444-BAJ-RLB

ORDER

Considering the foregoing Joint Motion for Protective Order (R. Doc. 95), the proposed Protective Order (R. Doc. 95-1), and for good cause shown;

IT IS ORDERED that the Motion is **GRANTED** and the attached Protective Order is entered into the record of the above-referenced matter.

Signed in Baton Rouge, Louisiana, on February 22, 2018.

RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, d/b/a HOPE MEDICAL GROUP FOR WOMEN, on behalf of its patients, physicians, and staff, et al., Plaintiffs, v. REBEKAH GEE, in her official capacity as Secretary of the Louisiana Department of Health, et al., Defendants.	Case No. 3:16-CV-444-BAJ-RLB

STIPULATED PROTECTIVE ORDER

The Court having received and considered the Joint Motion for Stipulated Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and the parties, through their respective counsel having stipulated and agreed to the terms set forth herein, and good cause having been shown, it is hereby

ORDERED THAT:

1. Except as otherwise ordered by this Court, this Protective Order shall govern the handling of all confidential and sensitive documents, testimony, interrogatories, correspondence, and any other material or information produced, disclosed or filed by any party or non-party and designated as such in accordance with the terms hereof.

2. Any document or information produced by any party or non-party during the course of this litigation in response to any subpoena or discovery request, including but not limited to

requests for production of documents, interrogatories, transcripts of depositions and exhibits thereto, or requests for admission, may be designated as "Confidential—Subject to Protective Order." Such designation may be made by (a) stamping "Confidential—Subject to Protective Order" on a document and/or including the legend "Confidential—Subject to Protective Order" next to responses to interrogatories or requests for admission; (b) counsel's written designation of documents, responses to interrogatories or requests for admission as "Confidential—Subject to Protective Order" made within ten (10) days of service of such document or information; or (c) counsel's written designation of portions of documents, responses to interrogatories, or requests for admission as "Confidential—Subject to Protective Order" made within ten (10) days of service of such document or information. Deposition transcripts, portions thereof and/or exhibits thereto, may be designated as "Confidential—Subject to Protective Order" by either (a) making a statement to that effect on the record at the deposition; or (b) counsel's written designation of certain pages or portions of the transcript by attorneys for the parties. Materials shall be treated as "Confidential—Subject to Protective Order" until the ten (10) day period for designation has elapsed.

3. No designation of materials as "Confidential—Subject to Protective Order" shall be made unless counsel for the designating party believes in good faith that such information is "Confidential" as defined in Paragraphs 5 & 6, respectively. Counsel for the designating party shall make designations as narrowly and reasonably practicable, including but not limited to designating only certain portions of documents as "Confidential—Subject to Protective Order" and/or requiring redactions in accordance with Paragraph 10.

4. The real names of John Doe 1, M.D., John Doe 2, M.D., and John Doe 3, M.D., shall be placed under seal. A copy of that filing shall be served on Defendants in a manner other than through the court's electronic filing system.

5. "Confidential" information shall mean any information about the Plaintiffs, as well as their staff, physicians, and patients, including but not limited to personnel information, patient information, financial information, employee handbooks, policies and procedures concerning the Plaintiffs' operations, and other sensitive information that could jeopardize the privacy of the staff, physicians, patients, and others associated with Plaintiffs. "Confidential" information may also include, but is not limited to, any sensitive business documents or information produced by a party, a non-party healthcare facility or any other non-parties, or any other information that constitutes confidential information under the Federal Rules of Civil Procedure and/or applicable laws or regulations including U.S. federal, state, or local privacy, data protection or secrecy laws.

6. "Confidential" information may also include information related to investigations conducted by or legal, disciplinary or other actions taken by the Louisiana Department of Health ("LDH"), containing information, including but not limited to patient information, protected health information, information regarding the fitness of any person to continue to hold a license to practice medicine, peer review information regarding any physician, information regarding claims of medical malpractice, information subject to patient-physician privilege, information related to actions or investigations regarding specific licensees, information from investigative agencies containing the identity of a confidential source of information, and information regarding records and proceedings of any peer review committee or healthcare licensure agency of LDH.

7. Under no circumstances other than those specifically provided for in this Order or subsequent Court Orders, or with the express written consent of the producing party or producing

non-party, shall "Confidential" information be used for any purpose except the prosecution or defense of this litigation, or be in any way revealed, delivered or disclosed, or otherwise made known, in whole or in part, to any person except:

a. the Court and any personnel necessary to facilitate this litigation, including clerks, court reporters, and court administrative staff;

b. counsel of record for the Parties to this action and their associated attorneys in the same law firm, paralegals and other professional personnel (including support staff) who are employed by the same law firm and directly assisting such counsel in the prosecution or defense of this litigation, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder; provided that the term "law firm" as used in this paragraph expressly includes LDH, the Office of the Attorney General, the Office of the District Attorney for Caddo Parish, the Office of Commissioner of the Division of Administration, and the Center for Reproductive Rights;

c. the named parties and any personnel employed by them, including any personnel employed by them, who are actually engaged in the preparation of this action for trial or other proceedings herein, who have been advised of their obligations hereunder, and who have signed an Agreement to Be Bound By Protective Order, in the form appended hereto;

d. expert witnesses, agents, or consultants retained by the parties or their counsel to furnish technical or expert services in connection with this

action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceedings herein, but only to the extent that counsel for the disclosing party reasonably believes in good faith that the expert, agent, or consultant needs access to each specific piece of Confidential information that is being disclosed in order to render such services or provide such testimony; provided, however, that such Confidential information is furnished, shown or disclosed in accordance with the terms of this Order, and provided further that before any party makes a disclosure of Confidential information to more than five (5) persons in this category who are not required to be formally disclosed in discovery, counsel for that party will meet and confer with counsel for the designating party pursuant to the process described in Paragraph 16;

e. an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical, or other personnel of such officer, if furnished, shown, or disclosed in accordance with Paragraph 10 hereof;

f. any person employed by the named parties in this litigation and any counsel who previously saw or received the information in the regular course of his or her duties, except that nothing in this Order may be construed to excuse or mitigate the non-disclosure and confidentiality obligations required by applicable laws;

g. any other person expressly agreed to, in writing, by the parties; where, however, such person will have access to materials designated as

"Confidential—Subject to Protective Order" that were produced by a non-party, the express written agreement of the non-party must also be obtained.

8. Any summary, compilation, notes, electronic images or databases containing material that has been designated as Confidential shall be subject to the terms of this Order to the same extent as the materials from which the summary, compilation, notes electronic images or databases are made or derived.

9. At the time of delivery or disclosure, counsel of record shall instruct any person to whom any Confidential information is delivered or disclosed to maintain the confidentiality of all information protected by this Order and furnish to all such persons a copy of this Order. Counsel of record shall maintain a record of all persons to whom Confidential information have been disclosed or delivered. Counsel must also maintain original executed Agreements to Be Bound By Protective Order.

10. In addition to designating materials as "Confidential—Subject to Protective Order," a producing or receiving party may require redactions to such materials, whether they are the party's own materials or materials produced by another party or non-party for use in this litigation. To the extent that a party objects to any such redaction, the parties shall address that dispute subject to the provisions of this Order, with the Court ultimately to decide (based on an *in camera* review of a non-redacted version of materials at issue) any dispute over the need for redactions that the parties cannot resolve on their own.

11. Should a party reasonably believe that disclosure of Confidential information in a hearing or trial is necessary, such party shall provide reasonable advance notice of such belief to the party or non-party designating such information as Confidential. Counsel shall meet and confer

in an attempt to resolve any disputes about the designation or treatment of any document or information before presenting such disputes to the Court. If the parties cannot resolve the issue informally in good faith, the party wishing to disclose Confidential information may seek relief from the Court within fourteen (14) days. The document or information in question will remain subject to the confidentiality provisions of this Order until the Court rules.

12. The parties agree that no Confidential information shall be included in any document that is publicly filed in this litigation. In the event that a party intends to use Confidential information in a document that is required to be filed publicly, such as an affidavit, memorandum of law, or notice, counsel for the party shall: (a) redact all Confidential information from the document to be filed publicly; (b) mark clearly any unredacted copy of that document with the legend "Confidential—Subject to Protective Order" on each page containing Confidential information; and (c) serve an unredacted copy, with that designation, upon the parties who are bound by this Protective Order and upon the Court.

13. In lieu of marking originals of documents, the parties may mark copies that are produced or exchanged.

14. Unless a court orders otherwise, the parties and their counsel shall maintain the confidentiality of all Confidential information after final disposition of this litigation, by adjudication (including appeals) or otherwise (including by settlement). Within thirty (30) days after the final disposition of this litigation, the recipient shall either (a) return to the producing party or producing non-party all Confidential information, all copies of such information, and any documents incorporating such information, or (b) securely destroy all such materials and certify in writing to counsel for the producing party or producing non-party that all such materials have been destroyed. Provided, however, that nothing in this Protective Order shall be interpreted or

construed to require any officer or agency of the State of Louisiana to destroy any official records obtained in the ordinary course of such officer's or agency's duties, or which must be maintained in compliance with state law, federal law, or the regulations of such agency.

15. This Order is entered solely for the purpose of protecting the confidentiality of information and facilitating the exchange of documents and information between the parties and producing non-parties to this proceeding, without unreasonably or unnecessarily limiting or restricting the ability of the parties and/or their counsel to develop their claims or defenses in this matter, and without jeopardizing the safety and wellbeing of the Plaintiffs, their patients, and their physicians, other health care professionals, and other staff, such that the involvement of the Court would not be unnecessarily required to resolve disputes over confidentiality. By entering into this Order, no party agrees to produce any particular document or information, including but not limited to, any documentation or information referenced herein. Nothing in this Order shall be deemed to be a limit or waiver of the attorney-client privilege, the work-product doctrine, or any other privilege or doctrine. This Order shall be without prejudice to the right of any party to object to the production of any information or documents or to object to the admissibility of any evidence or testimony. Moreover, this Order shall be without prejudice to the right of any party or non-party to present to the Court a motion for a separate protective order as to any such particular document or information, including restrictions differing from those as specified herein, or the right of any party to seek relief from, or modification of, this Order or any provisions thereof, or to challenge any designation of Confidential information as to any particular document or documents, or portion thereof, as inappropriate under the applicable law; nor shall this Order be deemed to prejudice any party in any way in any future application for modification of this Order.

16. Any party may object to the designation of "Confidential—Subject to Protective Order" pursuant to this Order. Counsel for the parties, as well as counsel for any non-parties (if the designated documents are produced by a non-party), shall meet and confer in an attempt to resolve any disputes about the designation or treatment of any document or information before presenting such disputes to the Court. If the parties and, if applicable, producing non-parties, cannot resolve the issue informally in good faith, a party or producing non-party may seek relief from the Court within fourteen (14) days, and the burden will be on the designating party or non-party to show good cause as to why the document or information should remain "Confidential." The document in question will remain subject to the confidentiality provisions of this Order until the Court rules on the designation of the document.

17. A party shall not be obligated to challenge the propriety of a designation at the time made, and a decision not to challenge a designation shall not preclude a subsequent challenge thereto (nor shall it constitute any admission or inference that the information is, or ever was, confidential).

18. The parties may agree in writing only to withdraw the designation of "Confidential—Subject to Protective Order."

19. The inadvertent or unintentional failure to designate discovery materials as "Confidential—Subject to Protective Order" shall not be deemed a waiver in whole or in part of a party's or non-party's claim of confidential treatment under this Order. In the event of an inadvertent or unintentional failure to designate materials, the producing party or non-party may restrict further disclosure of the document or information in accordance with this Order by notifying the receiving party in writing of the change in designation. The receiving party shall

then take reasonable steps to prevent any further disclosure of such newly designated information, except as permitted by this Order.

20. The parties agree that any documents that are otherwise authentic for purposes of admissibility remain authentic even if stamped "Confidential—Subject to Protective Order."

21. In the event additional parties join or are joined in this action, they shall not have access to material marked "Confidential—Subject to Protective Order" until the newly joined party by its counsel has executed and filed with the Court its agreement to be fully bound by this Order.

22. If a party discloses Confidential information in a manner not authorized herein, the party must immediately and in writing notify the producing party or producing non-party of all pertinent facts relating to such disclosure and, without prejudice to other rights and remedies of the producing party or producing non-party, make every effort to prevent further disclosure by the recipient or by the person to whom the recipient disclosed such information.

23. Each person or entity that receives or produces any designated information hereby agrees to subject itself to the jurisdiction of this Court for the purpose of any proceedings related to the performance under, compliance with, or violation of this Order. Any party claiming a violation of this Order may seek declaratory and/or injunctive relief, or any other remedy allowed by law. The prevailing party in any enforcement action shall be entitled to recover its reasonable attorneys' fees and costs relating to the enforcement action.

24. Nothing in this Stipulated Protective Order precludes Defendants from asserting objections to the use of the Protective Order as evidence in this case or for any other purpose.

25. Any document filed under seal shall be filed in accordance with the Court's Administrative Procedures.[1] Any document filed under seal with the Court shall be handled by the Court in accordance with its procedures at the conclusion of the litigation.[2]

Signed in Baton Rouge, Louisiana, on February 22, 2018.

RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

[1] The Administrative Procedures for Filing Electronic Documents in the United States District Court for the Middle District of Louisiana can be located at the court's website (http://www.lamd.uscourts.gov) under "EFiling," "CM/ECF Info," "Administrative Procedures." (See pages 10-11).

[2] "Pleadings and other papers filed under seal in civil . . . actions . . . shall be maintained under seal for thirty (30) days following final disposition of the action. After that time, all sealed pleadings and other papers shall be placed in the case record unless the District Judge or Magistrate Judge, upon motion, orders that the pleading or other paper be maintained under seal." M.D. La. General Order No. 93-1.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, d/b/a HOPE MEDICAL GROUP FOR WOMEN, on behalf of its patients, physicians, and staff, et al., Plaintiffs, v. REBEKAH GEE, in her official capacity as Secretary of the Louisiana Department of Health, et al., Defendants.	Case No. 3:16-CV-444-BAJ-RLB

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I,_____, have been provided a copy of the Stipulated Protective Order ("Order") entered in this case and have carefully reviewed the Order. I understand the Order and agree to be bound by the terms of the Order not to disclose any information designated as "Confidential" to any person in violation of the Order. I understand that by signing this Agreement, I voluntarily submit to the jurisdiction of this court for the purpose of any proceedings related to the performance under, compliance with, or violation of this Order. I understand that any violation by me of this Agreement or the terms of the Order may be punishable to the fullest extent allowed by law.

DATED: _____

SIGNED: _____

Printed Name: _____

Exhibit B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGAL ACADEMIC INTERVENOR ERIKA BACHIOCHI

1. I am a legal scholar and a fellow at the Ethics and Public Policy Center in Washington, D.C. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and have published several law review articles and books on abortion law and abortion issues. These are read by judges, attorneys, academics and students. The articles and books, among other things, aid in the understanding of the law.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish a law review article on *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing law review articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Massachusetts this 24th day of September 2020.

/s/ Erika Bachiochi
Erika Bachiochi

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGAL ACADEMIC INTERVENOR LIGIA CASTALDI

1. I am a legal scholar and professor of law at Ave Maria School of Law in Naples, Florida. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and have published several law review articles and a book on abortion law and abortion issues. These are read by judges, attorneys, academics and students. The articles and my book, among other things, aid in the understanding of the law.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish a law review article on *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing law review articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Naples, Florida this 24th day of September 2020.

/s/ Ligia De Jesus Castaldi
Ligia De Jesus Castaldi

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGAL ACADEMIC INTERVENOR TERESA COLLETT

1. I am a tenured law professor at the University of St. Thomas School of Law in Minneapolis, Minnesota. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I first became aware of the Plaintiffs' motion to maintain documents under seal on September 10, 2020, and sought counsel to intervene immediately thereafter. I retained counsel on September 14, 2020.

3. I have written and have published several law review articles on abortion law and abortion issues. These articles are read by judges, attorneys, academics and students. The articles, among other things, aid in the understanding of the law.

4. Depending on the facts revealed upon the record being unsealed, I would write and publish a law review article on *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

5. If the record documents remain under seal, I will be prevented from writing and publishing law review articles to the extent desired and necessary to fully explain the Supreme Court's holding.

6. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Saint Paul, Minnesota this 24th day of September 2020.

/s/ Teresa S. Collett
Teresa S. Collett

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGISLATOR INTERVENOR PATRICK PAGE CORTEZ

1. I am a Louisiana legislator representing Louisiana Senate District 23. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I was elected and am currently serving as a senator for Louisiana Senate District 23. I am currently President of the Louisiana Senate

3. Depending on the facts revealed upon the record being unsealed, I would perform the following legislative tasks. I would seek to hold deliberative proceedings regarding the impact of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). In particular, I would hold hearings to understand the circumstances under which the Louisiana Act 620 was passed and whether it could have been drafted differently to pass constitutional scrutiny. I would craft new admitting

privilege legislation with the goal of it being constitutional under the Supreme Court's holding in *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). I would hold hearings on the performance of the Louisiana Attorney General and whether the evidence and arguments in the case were adequately developed by the Attorney General.

4. I will be prevented from effectively performing my function as a legislator for the tasks described in the above paragraph if record documents remain under seal.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Lafayette, Louisiana this 24th day of September 2020.

/s/ Patrick Page Cortez
Patrick Page Cortez

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT JOURNALIST/MEMBER OF THE MEDIA INTERVENOR DAILY CALLER NEWS FOUNDATION

1. The Daily Caller News Foundation is a Delaware 501(c)(3) non-profit news organization with operations in Washington, D.C. The Daily Caller News Foundation was formed with a mission to train up-and-coming reporters and editors, to carry out investigative reporting, and to perform deep policy reporting with a purpose of consumer awareness and education.

2. I, Ethan Barton, am the editor in chief of the Daily Caller News Foundation. I make this declaration on behalf of the Daily Caller News Foundation in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

3. The Daily Caller News Foundation has written and published multiple articles on the Supreme Court and on abortion law. These articles serve to inform the public and, among other things, hold public officials accountable.

4. Depending on the facts revealed upon the record being unsealed, the Daily Caller News Foundation would write and publish articles to explain to its readers and the public at large the effect of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

5. If the record documents remain under seal, the Daily Caller News Foundation will be prevented from writing and publishing articles to the extent desired and necessary to fully explain the Supreme Court's holding.

6. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Jackson Hole, Wyoming this 25th day of September 2020.

/s/ Ethan Barton
Ethan Barton

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT JOURNALIST/MEMBER OF THE MEDIA INTERVENOR DAN FAGAN

1. I am a columnist in New Orleans, Louisiana. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and have published articles on the Supreme Court and on abortion law. These articles serve to inform the public and, among other things, hold public officials accountable.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish articles to explain to my readers and the public at large the effect of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in New Orleans, Louisiana this 24th day of September 2020.

/s/ Dan Fagan
Dan Fagan

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGISLATOR
INTERVENOR LANCE HARRIS

1. I am a Louisiana legislator representing Louisiana House District 25. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I was elected and am currently serving as a representative for Louisiana House District 25.

3. Depending on the facts revealed upon the record being unsealed, I would perform the following legislative tasks. I would seek to hold deliberative proceedings regarding the impact of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). In particular, I would hold hearings to understand the circumstances under which the Louisiana Act 620 was passed and whether it could have been drafted differently to pass constitutional scrutiny. I would craft new admitting

privilege legislation with the goal of it being constitutional under the Supreme Court's holding in *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). I would hold hearings on the performance of the Louisiana Attorney General and whether the evidence and arguments in the case were adequately developed by the Attorney General.

4. I will be prevented from effectively performing my function as a legislator for the tasks described in the above paragraph if record documents remain under seal.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Alexandria, Louisiana this 24th day of September 2020.

/s/ Lance Harris
Lance Harris

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT JOURNALIST/MEMBER OF THE MEDIA INTERVENOR MOLLIE HEMINGWAY

1. I am a member of the media and a senior editor for The Federalist, a web magazine focused on culture, politics, and religion. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and published a book and articles on the Supreme Court and on abortion law. My book and these articles serve to inform the public and, among other things, hold public officials accountable.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish articles to explain to my readers and the public at large the effect of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Alexandria, Virginia this 25th day of September 2020.

/s/ Mollie Hemingway
Mollie Hemingway

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGAL ACADEMIC INTERVENOR LYNNE MARIE KOHM

1. I am a legal scholar and law professor at Regent University School of Law in Virginia Beach, Virginia. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and have published several law review articles on abortion law and abortion issues. These articles are read by judges, attorneys, academics and students. The articles, among other things, aid in the understanding of the law.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish a law review article on *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing law review articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Virginia Beach, Virginia this 24th day of September 2020.

/s/ Lynne Marie Kohm
Lynne Marie Kohm

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT JOURNALIST/MEMBER OF THE MEDIA INTERVENOR WILLIS KRUMHOLZ

1. I am a member of the media and writer for The Federalist and Alpha News. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I have written and have published articles on the Supreme Court and on abortion law. These articles serve to inform the public and, among other things, hold public officials accountable.

3. Depending on the facts revealed upon the record being unsealed, I would write and publish articles to explain to my readers and the public at large the effect of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020).

4. If the record documents remain under seal, I will be prevented from writing and publishing articles to the extent desired and necessary to fully explain the Supreme Court's holding.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Minneapolis, Minnesota this 24th day of September 2020.

/s/ Willis Krumholz
Willis Krumholz

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGISLATOR INTERVENOR BETH MIZELL

1. I am a Louisiana legislator representing Louisiana Senate District 12. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I was elected and am currently serving as a senator for Louisiana Senate District 12. I am currently President Pro Tempore of the Louisiana Senate

3. Depending on the facts revealed upon the record being unsealed, I would perform the following legislative tasks. I would seek to hold deliberative proceedings regarding the impact of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). In particular, I would hold hearings to understand the circumstances under which the Louisiana Act 620 was passed and whether it could have been drafted differently to pass constitutional scrutiny. I would craft new admitting

privilege legislation with the goal of it being constitutional under the Supreme Court's holding in *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). I would hold hearings on the performance of the Louisiana Attorney General and whether the evidence and arguments in the case were adequately developed by the Attorney General.

4. I will be prevented from effectively performing my function as a legislator for the tasks described in the above paragraph if record documents remain under seal.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Franklinton, Louisiana this 24th day of September 2020.

/s/ Beth Mizell
Beth Mizell

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JUNE MEDICAL SERVICES LLC, et al., Plaintiffs, *v.* COURTNEY N. PHILLIPS, in her official capacity as Secretary of the Louisiana Department of Health, Defendant. Journalists and Other Members of the Media, Louisiana Legislators, and Legal Academics. Movant-Intervenors,	No. 3:14-cv-00525-JWD-RLB

DECLARATION OF APPLICANT LEGISLATOR
INTERVENOR MARK WRIGHT

1. I am a Louisiana legislator representing Louisiana House District 77. I make this declaration in support of the Movant-Intervenors' Motion to Intervene and to Oppose Plaintiffs' Motion to Maintain Documents Under Seal. This declaration is based on my personal knowledge, and I could competently testify to its contents if called to do so.

2. I was elected and am currently serving as a representative for Louisiana House District 77.

3. Depending on the facts revealed upon the record being unsealed, I would perform the following legislative tasks. I would seek to hold deliberative proceedings regarding the impact of *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). In particular, I would hold hearings to understand the circumstances under which the Louisiana Act 620 was passed and whether it could have been drafted differently to pass constitutional scrutiny. I would craft new admitting

privilege legislation with the goal of it being constitutional under the Supreme Court's holding in *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103 (2020). I would hold hearings on the performance of the Louisiana Attorney General and whether the evidence and arguments in the case were adequately developed by the Attorney General.

4. I will be prevented from effectively performing my function as a legislator for the tasks described in the above paragraph if record documents remain under seal.

5. Further declarant sayeth naught.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Covington, Louisiana this 24th day of September 2020.

/s/ Mark Wright
Mark Wright